



Senate
Research
Center

ISSUES FACING

THE

80TH

TEXAS LEGISLATURE



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ISSUES FACING THE 80th TEXAS LEGISLATURE

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The following information is intended to serve as a reference guide to issues facing the 80th Legislature. It is not a comprehensive list of issues, but rather an outline of broad categories and topics of concern that have arisen during the interim. This is not intended to function as an endorsement of any issue by the Senate Research Center.



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AGRICULTURE, RURAL AFFAIRS, AND COASTAL RESOURCES

Agriculture and Rural Affairs

Since the terrorist attacks of September 11, 2001, there has been greater focus on federal and state need to prevent the spread of plant and animal disease and prevent the use of terrorism to disrupt the food supply and economic activity associated with the production and delivery of food and fiber.

As part of its ongoing efforts to safeguard United States (US) animal health, the US Department of Agriculture (USDA) initiated the implementation of the National Animal Identification System (NAIS) in 2004. NAIS is a cooperative state-federal-industry partnership to standardize and expand animal identification programs and practices to all livestock species and poultry. NAIS is being developed through the integration of three components—premises identification, animal identification, and animal tracking. The long-term goal of the NAIS is to provide animal health officials with the capability to identify all livestock and premises that have had direct contact with a disease of concern within 48 hours after discovery.

NAIS is currently a voluntary program. USDA has adopted a phased-in approach to implementation "to ensure the participation requirements of NAIS not only provide the results necessary to maintain the health of the national herd but also is a program that is practical for producers and all others involved in production." Various states have implemented their own animal identification programs to comply with NAIS.

The 79th Legislature enacted legislation (H.B. 1361) to begin implementation of the USDA-NAIS program and to provide a criminal penalty. H.B. 1361 authorizes the Texas Animal Health Commission (TAHC) to determine when components of the animal identification system would be required rather than voluntary. TAHC approved proposed regulations for Texas' premises and animal identification program in December, 2005. TAHC is authorized to assess fees for registration of premises and to establish the amount of the premises registration fee. The proposed rule establishes a premises registration fee and establishes a date on which the fee will be applicable.

While NAIS and all its components in Texas are currently voluntary, many have expressed concerns about confidentiality and infringement of rights, especially for small family farmers or those who own only a few head of livestock or other animals that may be inadvertently included in the NAIS requirements for identification.

The 80th Legislature may re-evaluate the criminal penalty established by H.B. 1361 and continue to investigate and weigh the level of risk at hand, the economic cost, the cost to rights or privacy, the use of new technologies, and the benefits to be gained from NAIS implementation.

The 80th Legislature may also evaluate best practices in other states to prevent the spread of plant and animal disease and disruption of the food supply in order to determine what practices are suitable for Texas.

Animals and Natural Disasters

Recently the biggest natural disaster threats have been from hurricanes, with animals moving in from Louisiana and Mississippi, and wildfires last spring destroyed up to 5,000 livestock animals. These circumstances have created dilemmas of safe harbor as well as safe carcass disposal.

The 80th Legislature may consider partnerships and cooperation between the United States Department of Agriculture, the Texas Department of Agriculture, the Texas Cooperative Extension, the Texas Animal Health Commission, Texas Parks and Wildlife Department, and other states in determining best practices for animal evacuations, safe harbor, and safe carcass burial or disposal in cases of natural disasters such as hurricanes and wildfires and in cases of emergencies involving foreign and emerging animal diseases.

Avian Influenza

There have been no cases of avian influenza (AI) detected in North America and the current form of the disease is not easily transmittable. Nonetheless, there is some concern about the migratory nature of birds that could be intermingling with birds from Southeast Asia, where the original outbreak of AI took place, and potentially carrying disease elsewhere. Diseased birds may also be introduced through commercial traffic. The focus in Texas has been on sampling from sport hunting and live bird surveillance and collection. The surveillance program can be costly and time consuming.

The 80th Legislature may consider measures to facilitate monitoring and sampling of migratory birds in order to minimize the threat of avian influenza.

Road Inspections

Road inspections of produce and cargo is one method of detecting and monitoring plant disease and terroristic threats to the food supply. Currently, Texas does not have permanent road inspections but has implemented some 72-hour road inspections on a trial basis with no federal funding. Other states, particularly California, have permanent road

stations that are line-item funded. With increased global trade, road inspection stations may provide for early detection and rapid response and recovery.

The 80th Legislature may consider legislation to establish road inspection stations to combat pest infestation, plant disease, and natural and intentional contamination of food supplies.

Coastal Resources

Coastal Erosion

The Texas coastal wetlands provide ecological and economic benefits to the state, including improved water quality, nurseries for fish, wildlife habitat, flood buffers, erosion control, and recreational opportunities. The sustainability and health of the Texas coastal area is under increasing pressure from erosion, subsidence, rising sea levels, and land development.

The Coastal Erosion Planning and Response Act (CEPRA), first authorized and funded by the 76th Legislature in 1999, is a collaboration between the Texas General Land Office (GLO), federal and local governments, and the citizens of Texas coastal communities. CEPRA funds are used for estuary programs, beach nourishment projects, dune restoration projects, shoreline protection projects, habitat restoration/protection, university research, non-profit groups, and studies.

The 79th Legislature enacted S.B. 517, relating to studies or projects concerning coastal erosion that may be undertaken by the GLO in conjunction with qualified project partners. This legislation provides more flexibility for the use of CEPRA funding and broadens the scope of potential demonstration projects.

The 80th Legislature may continue to monitor the effectiveness of CEPRA and examine ways to improve the program, leverage local and federal funds with state funds, and clarify the roles of federal and local government in erosion response.



BUDGET

Revenue

The 2008-2009 Biennial Revenue Outlook

In accordance with Article III, Section 29a, of the Texas Constitution, in January 2007, the Comptroller of Public Accounts (comptroller) will issue the Biennial Revenue Estimate (BRE) Report (80th Texas Legislature, 2008-2009) that presents the revenue estimate for the remainder of fiscal year (FY) 2007 and projects the anticipated revenue available for the 2008-2009 biennium. The BRE provides the framework for determining the amount of money the legislature will be able to appropriate for the biennium.

On November 20, 2006, Comptroller Carole Keeton Strayhorn, issued the Fall 2006 economic forecast. Strayhorn stated that the state's economy will continue tracking the United States economy and will moderate over the next three years, growing at pace that is slower than the state's recent growth, but that will still be at a healthy rate.

Strayhorn noted that, "With the state's increasing ties to United States performance, Texas economists pay close attention to national developments when forecasting the direction of our state's economy. Nationally, sales of existing homes, prices, and new construction starts are falling. Although the Texas housing industry remains relatively healthy, it will be hampered by a smaller number of new home starts over the next three years, as well as a slowing economy in general."

Strayhorn said that Texas has recovered from the 2002-2003 economic slowdown that followed the triple catastrophes of September 11, 2001, the Enron and WorldCom scandals, and the sharp economic downturn in the high tech industry. Strayhorn stated that the gross state product will grow at a rate of five percent for 2006. She added that Texas' real gross state product is expected to grow at an average annual rate of 3.5 percent in calendar years 2007, 2008, and 2009, compared to 4.8 percent annually from 2003 to 2006.

The economic forecast also projected an average annual growth rate for personal income in Texas of 6.4 percent in calendar years 2007, 2008, and 2009. This projection is less than the 7.0 percent average annual growth rate over the past three years.

Strayhorn concluded by saying "Texas' gross state product will still slightly outpace the national gross domestic product in calendar years 2007 and 2008 and increase at the national rate in 2009."

Taxes provide the most important source of general revenue (GR) for the state, with the sales and use tax collection continuing to be the largest source of tax revenue. The motor vehicle sales and use tax generates the second largest source of tax revenue. In past years, the franchise tax, the state's general business tax, contributed the third largest source of revenue to state coffers and was the state's largest state tax not levied directly on consumption. H.B. 3, 79th Legislature, Third Called Session, amended Chapter 171 of the Tax Code to modify the franchise tax rate and base, replacing the current franchise tax base of taxable capital and taxable earned surplus with a new base, called "taxable margin." The first payments of the new business "margins tax" will begin during the 2008-2009 biennium. The latest projected estimates on business margins tax revenue indicate that the business tax will remain the third largest source of state revenue. Other sources of tax revenue include oil and gas severance taxes, motor fuels taxes, insurance taxes, tobacco and alcoholic beverage taxes, and utility taxes. Non-tax revenue includes interest and investment income, lottery proceeds, and other revenues such as tobacco settlement funds.

On January 1, 2007, Susan Combs took office as the new comptroller of public accounts. The 2008-2009 BRE was issued on January 8, 2007, under her directive and includes updated information on the revenue overview and the economic outlook and provides the amount of revenue available for appropriation by the 80th Legislature. According to the 2008-2009 BRE, "[t]he 80th Legislature will have \$82.5 billion available for general revenue-related appropriations" for the biennium.

Budget

S.B. 1, General Appropriations Act, 79th Legislature, Regular Session

The 2006-2007 biennial budget includes appropriations for state government operation that total \$138.2 billion in All Funds. The 2006-2007 biennial budget includes estimated appropriations of \$64.1 billion from general revenue (GR) funds, \$5.6 billion from GR-dedicated funds, \$48.3 billion in federal funds, and \$20.1 billion in other funds. The All Funds budget represents a total increase of \$11.5 billion, or nine percent, from the 2004-2005 biennial budget.

The three largest dollar amount increases in the All Funds budget occur in health and human services functions, the agencies of education, and business and economic development. The \$4.5 billion increase in health and human services is due to caseload growth and increased costs in Medicaid and the Children's Health Insurance Program (CHIP) and in funding protective services reforms. The increase of \$2.9 billion in the agencies of education function consists of a \$1.8 billion increase for public education and a \$1.0 billion increase for higher education. A significant amount of the increase in

funding for public education is attributed to enrollment growth. Most of the increase in funding for the business and economic development function is due to additional federal funds and other funds being made available to the Texas Department of Transportation.

Appropriations Made During the 79th Legislature, Third Called Session

The 79th Legislature, Third Called Session, enacted legislation that appropriated approximately \$4 billion in additional revenues for the 2006-2007 biennium. Of the \$4 billion in additional revenues, \$3.8 billion was appropriated for public education, \$39 million for institutions of higher education, and \$2 million for the comptroller's office. With the inclusion of the additional appropriations, the total 2006-2007 All Funds budget is approximately \$142.0 billion, representing a 12.1 percent increase over the 2004-2005 biennium.

Fiscal Year 2008-2009 Budget Instructions

On June 2, 2006, the Legislative Budget Board (LBB) and the Governor's Office of Budget, Planning, and Policy (GOBPP) issued a memorandum detailing instructions for agency and institution of higher education (IHE) legislative appropriation requests (LARs) for the 2008-2009 biennium.

Under the instructions set forth in that memorandum, an agency's baseline request for GR-related funds will be limited to 90 percent of the sum of amounts expended in FY 2006 and budgeted for FY 2007, plus an amount equal to the GR-related allocation for the three percent/\$50 employee pay raise in 2007. Exceptions to the 90 percent limitation include amounts necessary to maintain public education funding based on legislative action, satisfy debt service requirements for existing bond authorizations, maintain caseloads for federal entitlement services, and maintain adult prison populations.

Funding requests for other purposes which exceed the baseline spending level may not be included in the baseline request but may be submitted as exceptional items. The administrator's statement accompanying the budget request should identify which exceptional items are tied to reaching 100 percent of the 2006-2007 spending level.

From September 13, 2006, through November 14, 2006, the Senate Finance Committee heard testimony from state agencies and IHEs regarding LARs for the 2008-2009 biennium. With few exceptions, state agencies and IHEs requested the restoration of the mandated 10 percent budget reduction as the number one exceptional item request in order to maintain current services and perform core operations.

Factors Affecting Spending

Pay-As-You-Go Limit

Article III, Section 49a, of the Texas Constitution prohibits the legislature from appropriating more revenue than will be collected during the biennium unless the appropriation is approved by a four-fifths vote of each house. Under the Tax Relief Amendment of 1978, the growth of appropriations from state tax revenues not dedicated by the constitution is limited to the estimated growth of the state's economy.

Once an appropriations bill is passed by the legislature, the comptroller must determine whether anticipated revenue will be sufficient to cover appropriations. If the comptroller determines that the appropriations bill is within the constitutional limit, the bill is certified and sent to the governor for approval. If the comptroller determines that the bill appropriates more than the amount of anticipated revenue, thus exceeding the constitutional limit, the bill must be returned to the house in which it originated, where steps may be taken to bring the appropriations within the amount of anticipated revenue.

Welfare Spending Limit

Article III, Section 51-a, of the Texas Constitution provides that the amount that may be expended from funds for assistance grants to or on behalf of needy dependent children and their caretakers (Temporary Assistance for Needy Families, or TANF) shall not exceed one percent of the state budget in any biennium.

Limit on the Growth of Certain Appropriations (Spending Limits)

The Texas Constitution, under Article VIII, Section 22, limits the biennial rate of growth of appropriations from state tax revenue not dedicated by the constitution to the estimated rate of growth of the state's economy. The LBB adopts items of information, which include the estimated rate of growth of the Texas economy as measured by personal income; the 2006-2007 level of appropriations supported by the state tax revenue not dedicated by the constitution (the base biennium); and the limit on appropriations or the constitutional spending limit for the 2008-2009 biennium. The limit on appropriations for the 2008-2009 biennium is determined by multiplying the 2006-2007 base budget by the growth of Texans' personal income from the 2006-2007 biennium to the 2008-2009 biennium.

On November 27, 2006, the LBB met to discuss the items of information and methodology required to set the Article VIII, Section 22, constitutional limit on certain appropriations for the 2008-2009 biennium.

John O'Brien, director, LBB, stated that the LBB has complied with the law by identifying the items of information that are necessary to establish the constitutional limit. O'Brien stated that first item of information is the level of appropriations for state tax revenues not dedicated by the constitution for 2006-2007 biennium, or the base amount. The LBB has calculated that amount to be \$55.5 billion, as of November 2006.

O'Brien stated that the second item of information used in the determination of the spending limit is the estimated rate of growth for the state's economy from the base biennium (2006-2007) to the next biennium, 2008-2009. O'Brien said that five growth rates have been submitted to the LBB for review. Those rates are: 13.22 percent, Texas Comptroller of Public Accounts (Fall 2006 Economic Forecast); 13.11 percent, Global Insight (November, 2006); 13.89 percent, Moody's Economy.com (November, 2006); 17.02 percent, University of North Texas Center for Economic Development & Research (October, 2006); and 15.05 percent, Perryman Group (November, 2006).

O'Brien said that from FY 2002 through FY 2007, the annualized rate of GR spending has totaled approximately 1.3 percent, excluding the appropriations of approximately \$4 billion added through the enactment of H.B. 1, 79th Legislature, Third Called Session. Including the additional \$4 billion appropriation included in H.B. 1, 79th Legislature, Third Called Session, the annualized rate of growth in GR spending has increased at approximately 2.5 percent.

Lieutenant Governor David Dewhurst stated that the 79th Legislature, Third Called Session, enacted bills that will provide approximately \$13.5 to \$14 billion in property tax relief for the 2008-2009 biennium. O'Brien stated that taking into account the appropriations necessary to provide for the \$13.5 billion in property tax relief during the 2008-2009 biennium, and comparing that amount to the \$55.5 billion base amount, the result will be a 25 percent increase over the base. O'Brien said that if the \$13.5 billion is included with the \$55.5 billion base amount, the spending limit will be exceeded by \$4 billion, without taking into account any other spending needs.

O'Brien said that the LBB is continuing to research options regarding the spending limit. The LBB has decided to defer a recommendation regarding a spending limit until prior to the introduction of a general appropriations bill for the 2008-2009 biennium.

State Indebtedness

Article III, Section 49-j, of the Texas Constitution provides that the maximum annual debt service in any fiscal year on state debt payable from the GR fund may not exceed five percent of an amount equal to the average of the amount of GR fund revenues, excluding revenues constitutionally dedicated for the purposes other than payment of state debt, for the three immediately preceding fiscal years. Bonds and agreements

initially required to be repaid from GR funds would be subject to the debt ceiling provision if GR funds were subsequently needed to repay the obligations.

Economic Stabilization Fund (ESF) or "Rainy Day" Fund

The ESF, or rainy day fund, is a constitutional fund that was created by the voters in 1988. Whenever collections are sufficient, the fund receives an amount of GR equal to 75 percent of the amount of oil production tax collections in excess of 1987 levels, and 75 percent of the amount of natural gas tax collections in excess of 1987 levels. The fund also receives one-half of any unencumbered GR funds balance at the end of each biennium. The legislature may also appropriate revenue to the fund. The legislature may appropriate amounts from the ESF at any time and for any purpose by a two-thirds vote of the members present in each house. As of November 29, 2006, the cash balance in the ESF totaled \$1.745 billion. The last transfer to the ESF occurred on October 30, 2006, in the amount of \$1.55 billion. According to the last official revenue estimate (April, 2006), the next transfer will total approximately \$1.088 billion and will be made in FY 2008.

2008-2009 Budget Considerations

While the state is expected to end the current biennium with a revenue surplus, the amount of the surplus available for appropriation during the 2008-2009 will not be known until the issuance of the BRE. Regardless of the amount of the surplus available, concerns have been identified that could affect state spending during the 2008-2009 biennium.

Child Support Program

The federal Deficit Reduction Act (DRA) of 2005 substantially reduced funding to Child Support Enforcement programs. The Office of the Attorney General (OAG) has determined that the combined financial impact of the DRA on the program is \$196.6 million in all funds and the loss of 1,757 employees or almost 65 percent of the child support workforce. According to the OAG, these reductions will result in the loss of \$1.85 billion in child support collections over the 2008-2009 biennium, reducing services to 451,000 children, and affecting 376,000 families.

The OAG estimates that in order to retain the current level of collections and services, the OAG will require \$66.9 million in additional state funding for the 2008-2009 biennium.

Health and Human Services Functions

Health and human services agencies have requested a total of \$3.87 billion in GR and GR-dedicated funds in exceptional item requests for the 2008-2009 biennium, representing a 21 percent increase over the 2008-2009 baseline budget. Of this total, \$1.8 billion is being requested to maintain Medicaid and CHIP current services and costs and \$250.8 million is being requested to restore 2003 provider rate reductions to ensure a continuum of services.

Uncompensated Care

The Health and Human Services Commission (HHSC) was instructed, through a rider to S.B. 1, 79th Legislature, to conduct a study of the components and assumptions used to calculate Texas hospitals' uncompensated care amounts. According to the Cooperative Annual Survey submitted annually by hospitals to the Texas Department of State Health Services, charges of uncompensated care in 2004 totaled an estimated \$9.2 billion. By adjusting billed charges to allowable costs and accounting for other offsetting payments, HHSC estimates the cost of uncompensated care to total between \$443 million and \$2.3 billion for 2004.

HHSC is recommending that legislative action be taken to standardize the reporting of uncompensated care to accurately reflect the costs. Those recommendations include:

- developing a more standard and comprehensive center for data reporting and analysis;
- improving the tracking of charges, costs, and adjustments associated with underinsured and uninsured patients;
- developing and applying a standard set of adjustments that account for all non-patient specific funding streams and that offset hospitals' initially reported uncompensated care charges and can reliably estimate the amount of uncompensated care cost experienced by hospitals;
- implementing one uniform ratio of costs to charges that must be used for all reporting purposes;
- standardizing the definitions and adjustments used to determine uncompensated care costs incurred by hospitals;
- coordinating the reporting structure across reports that are used to assess uncompensated care;
- ensuring that the requirements and methodology for completing the Statement of Community Benefits are appropriate to its function of evaluating a hospital's community benefits performance as a basis for retaining its tax exempt status, that

the actual performance of a hospital is meaningful with respect to the value of its community benefits, and that this performance is auditable; and

- identifying the population for targeting state funding for uncompensated care.

Hospital Reimbursement

The 79th Legislature directed HHSC to study and make recommendations for changes in the hospital (both inpatient and outpatient services) reimbursement rate methodology. HHSC has determined that:

- hospital expenditures represent more than 62 percent of the Medicaid acute care expenditures;
- approximately 42 percent of the current level of state funding for hospital providers is through intergovernmental transfers;
- the adequacy of Medicaid rates impacts the amount of Disproportionate Share Hospital (DSH) reimbursement that can be spent on uncompensated care;
- the amount of DSH funding spent on uncompensated care impacts local taxing districts;
- inadequate Medicaid rates result in a hospital Medicaid reimbursement shortfall;
- the Medicaid hospital shortfall costs are reimbursed through Medicaid's DSH program. DSH is intended to reimburse hospitals for the provision of uncompensated care, thus, low hospital payment rates limit a hospital's ability to cover the cost of care to the uninsured;
- the cost of uncompensated care is passed to the local community through local taxes or private citizens through increased premiums;
- the multiple funding streams of Medicaid hospital reimbursement are intertwined with uncompensated care, community tax burden, insurance premiums, and the number of uninsured in Texas; and
- hospital supplemental payment methodologies, DSH, and Upper Payment Limit (UPL) encourage hospital use by the uninsured.

HHSC states that the major purpose for transforming the hospital reimbursement methodology is to enhance Medicaid's ability to be a prudent purchaser of healthcare. HHSC recommends that a strategy be developed that will include reforming hospital reimbursement, with market area hospital rates and capping the reimbursement of administration and capital costs, rebasing hospital rates, and raising hospital rates with the goal to increase rates to remove the hospital inpatient portion of the Medicaid shortfall.

Texas Education Agency (TEA)

In order to implement the provisions of the school finance reform bill, H.B. 1, 79th Legislature, Third Called Session, and accounting for increases in enrollment growth, TEA has requested \$38.99 billion for the Foundation School Program for the 2008-2009 biennium. This amount represents an increase of approximately \$13.5 billion more than the 2006-2007 biennium. In addition, TEA's priority exceptional item requests for the biennium include additional funds in the amount of \$180 million for the Existing Debt Allotment, \$150 million for the Instructional Facilities Allotment, and \$138 million to expand the Student Success Initiative.

Institutions of Higher Education

Senator Steve Ogden, chairman, Senate Finance Committee, has requested that all institutions of higher education, including community and technical colleges, general academic institutions, and health-related institutions estimate a total cost for educating a student through formula funding and report those amounts to the Senate Finance Committee, along with an explanation of the link between formula funding and the cost of educating a student.

The Texas Higher Education Coordinating Board (THECB) has made the following formula funding recommendations for the 2008-2009 biennium.

Community and Technical Colleges

THECB is recommending a total all-funds appropriation of \$2.45 billion for the 2008-2009 biennium, an increase of \$682 million, or 38.7 percent, over the 2006-2007 appropriation. Major components of the total recommended increase include providing an adjustment for known growth between the last two base periods and projected inflation between the current and next base period, resulting in a requested increase of approximately \$320 million and a change in funding for the upcoming biennium, based on 100 percent of the costs reported in the Report of Fundable Operating Expenses, less the amount of tuition collected, totaling approximately \$322.5 million more than the 2006-2007 amounts.

General Academic Institutions

THECB recommends a total all funds appropriation of \$4.59 billion for the 2008-2009 biennium. This amount reflects an increase of \$673.9 million, or 17.2 percent, over the 2006-2007 biennium. Of the total amount recommended, approximately \$569.8 million is attributable to adjustments for inflation and changes to the Instruction and Operations formula.

Health-Related Institutions

THECB recommends a total all funds appropriation of \$1.64 billion for the 2008-2009 biennium, an increase of \$380.6 million or a 30.3 percent increase more than the 2006-2007 biennium. This total amount includes THECB recommendations of \$221.5 million for inflation and formula changes to the Instruction and Operations formula.

Debt Service on Tuition Revenue Bonds (TRBs)

H.B. 153, by Morrison, et al., 79th Legislature, Third Called Session, granted TRB issuance authority of \$1.8 billion to IHEs. IHEs have requested a combined total of approximately \$240 million in exceptional items for debt service for TRBs for the 2008-2009 biennium.

Nursing Shortage

THECB recommends additional funding of \$6.5 million for the Nursing Shortage Reduction Program for the 2008-2009 biennium.

The Task Force to Increase Registered Nurse (RN) Graduates in Texas, in a report entitled *Strategies to Increase the Number of Graduates from Initial RN Licensure Programs*, THECB, October 2006, states that early projections from the Texas Center for Nursing Workforce Studies show that the state's nursing programs will need to increase the number of its graduates by 50 percent by 2010 for the future supply of nurses to meet the expected demand for nurses by 2020.

The report concludes that the state needs to make a substantial investment in preparing, recruiting, and retaining full-time nursing faculty. Recommendations in the report include increasing salaries of new and existing nursing faculty, providing stipends to full-time graduate nursing students who commit to working as full-time faculty, covering costs of preparing practice nurses for the nurse faculty role, increasing financial aid for students enrolled in initial licensure programs, and developing cooperative or work-study programs between nursing programs and the healthcare industry.

Criminal Justice

Based on projections from the LBB the offender population will exceed the operational capacity of the Texas Department of Criminal Justice (TDCJ) by 5,786 in FY 2008 and 7,328 in FY 2009. TDCJ is requesting exceptional item amounts of \$450.8 million for additional operating costs and \$440.6 million for construction costs for the 2008-2009 biennium. Major considerations for TDCJ include additional funds for utilities, increased funding for contracted capacity with private vendors, additional substance abuse felony punishment treatment beds, in-prison therapeutic community program expansion, a

medium security facility, additional halfway house beds, probation and residential treatment beds, and increased funds for probation outpatient substance abuse treatment.

Hurricanes Katrina and Rita Costs

According to reports submitted by state agencies as of May 1, 2006, to the LBB, state costs in FY 2006 related to the Gulf Coast hurricanes total \$1.5 billion. Approximately 62 percent of the costs are associated with Hurricane Katrina and 38 percent of the costs are attributable to Hurricane Rita. The state is projecting that it will receive approximately \$1.2 billion in federal fund reimbursement in FY 2006. The FY 2006 GR and GR-dedicated state cost is estimated to exceed \$250 million. Three agencies — TEA, HHSC, and the Texas State University System — account for 92 percent of the GR costs. The LBB is in the process of updating cost figures for costs of the hurricanes. In October, 2006, the federal government allocated \$428.7 million in Community Development Block Grants to Texas.

Other Issues

Appraisal Caps

Section 23.23(a) of the Tax Code sets a limit on the appraised value of a residence homestead, stating that its appraised value for a tax year may not exceed the lesser of the market value of the property or the sum of: (A) 10 percent of the appraised value of the property for the last year in which the property was appraised for taxation, times the number of years since the property was last appraised; (B) the appraised value of the property for the last year in which the property was appraised; and (C) the market value of all new improvements to the property, excluding a replacement structure for one that was rendered uninhabitable or unusable by a casualty or by mold or water damage. The appraisal limitation first applies in the year after the homeowner qualifies for the homestead exemption.

The current 10 percent appraisal cap became effective in 1998.

According to the governor's office, for tax year 2004, taxable values increased in 933 school districts, with an average increase in value of more than seven percent. Several proposals have been made by legislators to reduce the appraisal cap on homesteads and to extend the cap to all real property.

In September, 2006, Governor Perry appointed a task force to study appraisal caps and make recommendations prior to the convening of the 80th Legislature.

Revenue Caps

Cities, counties, and special taxing districts are currently allowed under Chapter 26 of the Tax Code to increase tax rates from year to year by an amount not to exceed eight percent from the previous year, with adjustments for changes in taxable value. Prior legislation has been drafted to reduce the eight percent "rollback" rate and it is anticipated that legislation to reduce the "rollback" rate will be filed during the 80th Legislature.

Commercial and Consumer Transactions

The Texas Department of Banking has estimated that money service businesses licensed in Texas to perform wire transfers initiated 43.4 million transactions totaling \$11.7 billion, including transactions to locations within Texas, the United States, and foreign countries including both commercial and consumer transfers.

During the 79th Legislature, Regular Session, S.B. 1501, by West, proposed to assess a 0.5 percent fee on wire transfer transactions. The comptroller's office fiscal note estimate determined that the fee would raise approximately \$34 million for distribution to counties and approximately \$254,000 for the state on a biennial basis.

Local Option Motor Fuels Tax

The construction, maintenance, and repair of roads in Texas are primarily funded through revenues generated by the state's motor fuels tax. Current Texas law does not allow a city, county, or region to enact a local gas tax. During the 79th Legislature, a provision in a bill allowed for local motor fuels tax authorization.

Real ID Costs

On May 11, 2005, the United States Congress passed the Real ID Act as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act, creating national standards for the issuance of state driver's licenses (DLs) and identification cards (IDs). The act establishes certain standards, procedures and requirements that must be met by May 11, 2008, if state-issued DL/IDs are to be accepted as valid identification by the federal government. According to a report entitled *The Real ID Act: National Impact Analysis*, presented by the National Governors Association, the National Conference of State Legislatures, and the American Association of Motor Vehicle Administrators, September, 2006, the standards are likely to alter longstanding state laws, regulations, and practices governing the qualifications for the production and issuance of DL/IDs in every state. According to the report, costs could escalate significantly if federal regulations differ substantially from the recommendations states used to form estimates.

ISSUES FACING THE 80TH TEXAS LEGISLATURE

The Texas Department of Public Safety has estimated that the federal Real ID Act will cost approximately \$268 million to implement during the 2008-2009 biennium and the cost could rise depending on final federal regulations.

Sources: Texas Comptroller of Public Accounts; LBB; *Fiscal Size-up, 2006-2007 Biennium*, LBB; *Federal Funds Watch, May 1, 2006*, LBB; *Formula Funding Recommendations for the 2008-2009 Biennium*, April 2006, THECB; various agency LARs.

ISSUES FACING THE 80TH TEXAS LEGISLATURE

Texas Economic History and Outlook, 1999-2009 Fall 2006 Forecast Fiscal Years

	1999	2000	2001	2002	2003	2004	2005	2006*	2007*	2008*	2009*
Texas Economy											
Gross State Product (Billions 2000\$)	691.3	722.6	740.8	757.1	767.2	799.8	837.3	876.1	913.8	945.2	975.9
Annual % Change	5.4	4.5	2.5	2.2	1.3	4.3	4.7	4.6	4.3	3.4	3.2
Personal Income (Billions Current \$)	530.3	581.3	615.6	624.0	642.9	678.3	730.0	784.0	836.6	889.1	945.8
Annual % Change	6.5	9.6	5.9	1.4	3.0	5.5	7.6	7.4	6.7	6.3	6.4
Nonfarm Employment	9,106.4	9,360.6	9,530.8	9,426.6	9,375.2	9,450.3	9,665.4	9,931.1	10,126.9	10,345.4	10,539.4
Annual % Change	2.8	2.8	1.8	(1.1)	(0.5)	.08	2.3	2.7	2.0	2.2	1.9
Resident Population (Thousands)	20,507.6	20,900.6	21,286.4	21,673.3	22,051.9	22,426.5	22,835.0	23,444.0	23,843.5	24,310.9	24,761.2
Annual % Change	2.0	1.9	1.8	1.8	1.7	1.7	1.8	2.7	1.7	2.0	1.9
Unemployment Rate (%)	4.7	4.4	4.4	6.1	6.7	6.2	5.4	5.1	5.3	5.3	5.2
Oil Price (\$ per barrel)	\$12.91	\$25.16	\$23.73	\$21.90	\$28.60	\$32.48	\$46.88	\$61.12	\$56.95	\$54.97	\$52.15
Natural Gas Price (\$ per MCF)	\$1.82	\$2.82	\$4.21	\$2.44	\$4.02	\$4.48	\$5.44	\$7.06	\$6.02	\$6.48	\$6.42
U.S. Economy											
Gross Domestic Product (Billions 2000\$)	9,361.9	9,762.8	9,885.1	10,002.4	10,208.3	10,614.5	10,963.4	11,329.2	11,618.4	11,958.8	12,342.8
Annual % Change	4.4	4.3	1.3	1.2	2.1	4.0	3.3	3.3	2.6	2.9	3.2
Consumer Price Index (1982-84=100)	165.5	170.7	176.2	178.9	183.1	187.3	193.5	200.7	206.3	210.3	214.6
Annual % Change	1.9	3.2	3.2	1.5	2.4	2.3	3.3	3.7	2.8	1.9	2.0
Prime Interest Rate (%)	7.9	9.0	8.0	4.9	4.2	4.1	5.7	7.6	8.4	7.8	7.9

*Estimated or Projected

Note: Oil and natural gas price forecasts for fiscal 2007 through 2009 are preliminary.

Sources: Susan Combs, Texas Comptroller of Public Accounts; and Global Insight, Inc.



BUSINESS AND COMMERCE

Electric Utilities

Electric Reliability Council of Texas (ERCOT)

The Public Utility Regulatory Act of 1995 (Act) authorizes the Public Utility Commission (PUC) to regulate the electricity market and ensure that only one electric energy provider serves each area of the state. S.B. 7 was enacted by the 76th Legislature in 1999 to amend the Act by deregulating the electricity generation market and permitting certain providers to compete for customers who choose their electric supplier in competitive areas. S.B. 7 also authorizes PUC to develop and promulgate customer protection rules during and after a transition to a competitive market.

The Electric Reliability Council of Texas (ERCOT) is responsible for directing and ensuring reliable and cost-effective operation of the electric grid and enabling fair and efficient market-driven solutions to meet customers' electric service needs.

ERCOT is under the regulation of PUC and performs three main roles in managing the electric power grid and marketplace. ERCOT monitors schedules submitted by wholesale buyers and sellers for the next day's electricity supply. ERCOT is responsible for ensuring that the system can accommodate those schedules and, if necessary, create a new market to fill the gap. ERCOT manages the incoming and outgoing supply of electricity over the grid, monitors the flow of power, and issues instructions to generation and transmission companies to maintain balance. ERCOT serves the central hub for retail transactions and, when a consumer chooses a retail electric provider, ERCOT is responsible for ensuring that the information related to that transaction is conveyed to the appropriate companies in a timely manner.

The 80th Legislature may consider measures to improve the ongoing implementation of S.B. 7 and implementation of Sunset Advisory Commission recommendations for ERCOT. The legislature may also consider legislation addressing the cost-effectiveness and fairness of congestion management mechanisms and the adequacy of energy generation capacity in the state.

Rate Regulation

Since the enactment of S.B. 7 in 1999, there has been an ongoing evaluation of the deregulation process and its effectiveness in lowering rates and providing choice for consumers. Many have expressed concerns about the larger electric utility providers controlling the marketplace and impeding competition in a "free market." Education of consumers regarding choices and alternative plans has also been identified as important in implementing deregulation and modifications to the current system.

The 80th Legislature may consider legislation facilitating the awareness and education process for consumers regarding electric utility choices and plans available in different areas of the state.

The 80th Legislature may also consider alternative forms of rate regulation offered in other states that could be used as models for modifying the current system in Texas.

Alternative Forms of Electricity Generation

Most electricity in the United States is generated using coal, oil, natural gas, nuclear energy, or hydropower. Some electricity is generated with alternative fuels such as geothermal energy, wind power, biomass, solar energy, or fuel cells.

- Geothermal energy utilizes steam trapped in the earth and a geothermal power plant is similar to a steam power plant.
- Wind power utilizes the force of the wind as it pushes against turbine blades, causing the rotor to spin and generate an electric current. Most wind is produced from wind farms or large groups of turbines located in consistently windy locations, such as West Texas.
- Biomass is organic matter, such as agriculture wastes and wood chips and bark left over when lumber is produced, which can be burned in an incinerator to heat water to make steam, which turns a turbine to make electricity. Solid wastes from cities can also fuel biopower plants.
- Solar energy is generated without a turbine or electromagnet and instead uses special photovoltaic cell panels to capture light from the sun and convert it directly into electricity which is stored in a battery.
- Fuel cells are devices or electrochemical engines that convert energy of a fuel directly to electricity and heat without combustion and are generally considered to be clean, quiet, and efficient.

The 80th Legislature may discuss the feasibility and capacity for alternative forms of electricity generation in Texas and consider legislation addressing the logistics and

funding issues relating to the use of alternative forms of electricity generation to meet the needs of the state.

Minimum Wage

The federal minimum wage for covered, nonexempt employees is \$5.15 per hour. The federal minimum wage provisions are set forth in the Fair Labor Standards Act (FLSA), which is administered and enforced by the U.S. Department of Labor (DOL) Employment Standards Administration's Wage and Hour Division. Since many states also have state minimum wage laws, where an employee is subject to both the state and federal minimum wage laws, the employee is entitled to the higher of the two minimum wages.

The FLSA contains some exceptions from the minimum wage requirement which apply to specific types of businesses or specific types of work. The law also provides for the employment of certain individuals at wage rates below the minimum wage. These exceptions include student-learners (vocational education students), as well as full-time students employed by retail or service establishments, agricultural entities, or institutions of higher education. Also included are individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury. Special certificates issued by the DOL Employment Standards Administration's Wage and Hour Division are required for this type of employment.

The FLSA also authorizes payment of a youth minimum wage, which allows employers to pay employees under 20 years of age a lower wage for 90 calendar days after they are first employed. Any wage rate above \$4.25 an hour may be paid to eligible workers during this 90-day period.

The current federal minimum wage has been set at \$5.15 since 1997. As of August 2006, 23 states and the District of Columbia have established state minimum wages in excess of the federal minimum wage. In January 2006, the Maryland legislature overrode a gubernatorial veto of a 2005 bill to increase its minimum wage level to \$6.15.

Bills were introduced in 33 states in 2006 regarding state minimum wage rates. As of August 2006, nine of those states (Arkansas, Maine, Maryland, Michigan, North Carolina, Ohio, Pennsylvania, Rhode Island, and West Virginia) had enacted legislation to increase the minimum wage. Most of those bills propose to increase the general minimum wage. Other bills that were considered or enacted are limited to a certain occupational category or seek to impose penalties for violations of existing minimum wage provisions. Bills introduced in 12 states link future minimum wage increases to a cost-of-living index.

The Texas Minimum Wage Act, Chapter 62 of the Texas Labor Code, as amended, establishes a minimum wage for non-exempt employees. Chapter 62 requires covered employers to provide each employee with a written earnings statement containing certain information about the employee's pay. The Texas Workforce Commission (TWC) is designated as the agency responsible for disseminating information about the Act. Chapter 62 also contains provisions concerning agricultural piece rate workers, exempts certain employers from its coverage, and provides civil remedies for violations. Effective September 1, 2001, Texas adopted the federal minimum wage rate by reference, raising the current minimum wage rate to \$5.15 an hour. The Act does not prohibit employees from bargaining collectively with their employers for a higher wage. The Act authorizes sub-minimum wage payments to a patient or client of the state's mental health programs or to other individuals due to age or productivity impairments.

The commissioner of agriculture is authorized to establish piece rates for agricultural commodities commercially produced in substantial quantities in Texas if sufficient productivity information is available. The Act provides a procedure for contesting an established piece rate.

The primary exemption from the Act is for any person covered by the federal Fair Labor Standards Act (FLSA). Other specific exemptions include employment in, of, or by religious, educational, charitable, or nonprofit organizations; professionals, salespersons, or public officials; domestics; certain youths and students; inmates; family members; amusement and recreational establishments; non-agricultural employers not liable for state unemployment contributions; dairying and production of livestock; and sheltered workshops.

The 80th Legislature may consider legislation to raise the minimum wage rate.

Telecommunications

The Public Utility Commission (PUC) has regulatory authority over telecommunications companies in Texas, including incumbent local exchange carriers (ILECs), such as SBC and Verizon, and competitive local exchange companies (CLECs). The PUC's regulatory role consists of settling disputes between companies, enforcing consumer protections, and administering programs to ensure access to service by consumers.

The 74th Legislature enacted law which opened the local telephone market to competition, allowing CLECs to enter the telecommunications market and requiring all telecommunications providers to interconnect their networks. Subsequently, Congress enacted the Federal Telecommunications Act (FTA), which opened local telephone competition at the national level by requiring regional operators to allow local providers

access through their networks and allowing regional companies to enter the long-distance market.

Under Chapter 58, Utilities Code, ILECs may choose to operate in a reduced regulatory framework by providing private network services and meeting the infrastructure needs of certain institutions and other technology-related infrastructure goals. The PUC is charged with overseeing the wholesale telecommunications market, including inter-exchange telecommunications services, to ensure that all providers have an equal competitive opportunity.

The PUC also manages the Texas Universal Service Fund (TUSF), established in 1987 to ensure that all Texas consumers have access to basic telephone service. The TUSF is generated from an assessment on intrastate telecommunications receipts which may be passed through to consumers through the normal billing process. Disbursements from TUSF are made to eligible companies to support service in high-cost rural areas and programs that provide discounts on service rates to low-income consumers or those with hearing or speech impairments.

Federal statutes regulate cable service providers and cable franchises. Texas municipalities may regulate the services and fees of a franchised provider to the extent allowed under federal law.

S.B. 5, 79th Legislature, Second Called Session (2005), was an omnibus measure relating to telecommunications. The bill contained provisions relating to cable and video franchises; high-speed telecommunications over the electric power network, known as broadband over power line (BPL); the deregulation of the telecommunications markets; the obligations of telephone service providers of last resort; the provision of discounts to low-income or disabled persons; expenditures from the TUSF; and other related matters.

S.B. 5 made significant changes to the regulation of cable and telecommunications in Texas. The bill provides for a state franchise system under the PUC to replace the municipal franchise structure. The bill required that the holder of a state franchise must provide capacity to support public, educational, and government access channels for noncommercial programming, subject to specified use requirements, among other requirements. A municipality must allow a state franchise holder to install, construct, and maintain a communications network within a public right-of-way. The municipality may require the franchise holder to obtain a construction permit to locate facilities in that right-of-way, but may not charge for the permit. The bill prescribed that a state franchise holder must pay certain fees to a municipality to effectively compensate a municipality for right-of-way provision or other costs.

The BPL provisions of the bill apply to electric utilities whether or not they are offering customer choice and allows an electric utility, through an affiliate or an unaffiliated

entity, to install or operate a BPL system on some or all of its electric delivery system in any part of its certificated service area. However, the bill does not require a utility to implement or install BPL, provide broadband services, or allow others to install BPL facilities or use the utility's facilities to provide broadband services. S.B. 5 established provisions relating to the development, ownership, operation, and implementation of BPL systems, and to relevant fees and payments. The bill required that an electric utility employ all reasonable measures to ensure that BPL operations do not interfere with or diminish the reliability of its electric delivery system. The bill also allowed certain utility BPL capital investments and expenses to be considered in a rate proceeding, but requires that such investments and expenses be allocated to those customers receiving the BPL-related services.

S.B. 5 provided for the deregulation of ILEC markets and established certain pricing flexibility, rate requirement, and service provisions applicable to transitioning and deregulated ILEC companies. The bill established a program of financial assistance from the TUSF for a free telephone service for blind and visually impaired persons, made other changes relating to the TUSF, and required the PUC to review and evaluate the TUSF and to report its findings to the 80th Legislature. The bill also expanded lifeline access to customers whose income equals up to 150 percent of the federal poverty level or whose household members receive certain assistance, established a code of conduct for telecommunications providers, and set forth provisions relating to, among others, municipal and municipal utility powers, mandatory toll-free calling plans, and mandatory extended area services. The bill also required the PUC to study whether the Public Utility Regulatory Act adequately preserves customer choice in association with broadband service.

The 80th Legislature may consider issues relating to the TUSF, including the collection and disbursement of funds from the TUSF, and accountability and oversight of the fund.

The 80th Legislature also may consider issues relating to access to public rights-of-way and adequate compensation relating to such access, and matters relating to access, adequacy, and costs of telecommunications services to consumers.



CRIMINAL JUSTICE

Capital Punishment for Sexual Offenses Against Children

Lieutenant Governor David Dewhurst has proposed capital punishment for offenders convicted of two violent sexual offenses when the victims were younger than 14 years of age. Four states have laws making it a capital offense to commit certain sexual offenses against children. Louisiana provides for capital punishment for the aggravated rape of a person under 13 years of age. Florida's 2005 Jessica Lundsford Act makes the fact that a person who committed a capital felony has been previously designated as a sexual predator an aggravating circumstance to be considered in imposing capital punishment. In 2006, Oklahoma and South Carolina enacted legislation providing for the death penalty for a person convicted of a second sexual offense against a child; in Oklahoma, the law applies if the victim was under 14 years of age, while in South Carolina the victim must be less than 11 years old. Montana generally provides for the death penalty for the second conviction of rape causing serious bodily injury, regardless of the victim's age.

Supporters of such laws assert that capital punishment is necessary to deter the most serious sexual predators and protect children. Opponents argue that such laws are unconstitutional, noting that in 1977 the United States Supreme Court overruled a Georgia law imposing the death penalty for rape, holding that such an irrevocable and severe punishment is a disproportionate penalty for rape. Opponents also note that there are already severe penalties for sexual offenses against children, there is no evidence that increasing the penalty significantly will have a deterrent effect, and such laws may encourage an offender to kill the victim to eliminate a witness.

The 80th Legislature may consider legislation authorizing capital punishment for certain sex offenders.

Mentally Ill Inmates

Many mentally ill persons end up in the juvenile and adult criminal justice systems, at a high cost to the state. Some argue that one reason for the increase in the number of mentally ill persons in criminal justice system is the lack of mental health services in the community. The early identification of mental health issues and the provision of easily-accessible community based services could divert many troubled persons from the criminal justice system.

One issue is providing adequate mental health resources both in the community and throughout the criminal justice system. This may include expanding the use of telemedicine, especially for rural counties which lack trained personnel, and providing more funding for mental health assessment and services. Other recommendations may include more resources for jail diversion programs to identify and stabilize mentally ill inmates and providing more special training of parole and probation officers in mental health oversight. Mentally ill defendants also present a major concern for the courts and defense counsel. Because many attorneys do not have the training to diagnose and deal with mentally ill defendants, there is a need for specially trained persons to assist attorneys in getting these defendants diverted to alternatives to incarceration. This will require early screening after arrest, as well increasing the availability of mental health resources.

The provision of adequate mental health services for juvenile and adult inmates and training correctional officers regarding mental illness and mental retardation may require increased resources. Community resources are also needed to provide inmates upon discharge with access to local mental health services so that they will continue to receive treatment and be less likely to reoffend.

The 80th Legislature may consider legislation relating to mental health services for mentally impaired offenders.

Residency and Work Restrictions for Sex Offenders

Many states bar certain sex offenders from living or working within a set distance of certain locations where children may congregate, such as schools. Texas permits such restrictions as a condition of community supervision or parole. However, 17 states now impose residency or work restrictions on sex offenders even after those offenders have completed their sentences. These restricted zones range from 300 feet to 2,000 feet, and may apply to all persons required to register as sex offenders or may be limited to certain offenders. Proponents assert that such laws promote public safety. Some supporters also argue that because other states have already imposed residency and work restrictions on sex offenders, those offenders may move to states without such restrictions, and those states will need to enact similar restrictions to protect their own citizens. Critics argue that there is no evidence that these restrictions promote public safety. They assert that overly harsh restrictions may put the public at greater risk by effectively depriving sex offenders of the ability to find places to live and work, forcing them to move away from family and other support groups, making it more difficult for them to seek therapy and other rehabilitation services, and discouraging sex offenders from registering and complying with sexual offender laws. Others question the constitutionality of such laws, arguing that many of these statutes deprive sex offenders of due process by imposing

harsh restrictions on entire classes of offenders without consideration of the individual's offense, subject offenders to double jeopardy by imposing additional punishment even after the offenders have completed their sentences, are sometimes so vaguely worded that it is not possible for an offender to determine what is necessary for compliance, and deprive offenders of the constitutional right to travel.

The 80th Legislature may consider legislation imposing additional restrictions on sex offenders.

"Stand Your Ground" Law

Texas law permits a person to use deadly force against another in self-defense, if a reasonable person in that position would not have retreated and deadly force is immediately necessary to protect the person against the other's use of deadly force or to prevent the commission of certain serious crimes. A person does not have to retreat before using force against another who has unlawfully entered the person's habitation.

In 2005, Florida enacted what supporters call the "stand your ground" law. Under the law, a person is presumed to have a reasonable fear of imminent peril of great bodily harm or death when using deadly force against a person who has unlawfully and forcibly entered the person's habitation or occupied vehicle. A person who is not engaged in unlawful activity and is attacked in any place where she or he has a right to be has no duty to retreat. The law also provides immunity from criminal prosecution and civil liability for the use of force in accordance with the law. A number of other states have since enacted similar legislation.

Supporters of such laws assert they allow law-abiding citizens to protect themselves against violent crime and prevent crime victims from being prosecuted or sued for protecting themselves. Opponents assert that existing law already provides citizens with the right to use deadly force to protect themselves against imminent bodily harm or death. Texas, like most states, does not require a person to retreat if he or she is confronted in the person's home by an intruder. By removing the duty to retreat when reasonably possible before resorting to deadly force, opponents argue, the law will escalate minor disputes into fatal encounters and encourage the unnecessary use of deadly force in questionable circumstances.

The 80th Legislature may consider enacting a "stand your ground" law.

Texas Youth Commission

There have been accusations of dangerous conditions and physical abuse of youths committed to Texas Youth Commission (TYC). In June of this year, the federal Department of Justice launched an investigation into conditions at TYC's Evins Regional Juvenile Center. There are problems with recruiting and retraining sufficient correctional officers and other staff. Currently correctional officers receive only two weeks of training. In the past decade, TYC has had to build facilities to meet demand, but some of these structures, such as open dormitories, do not lend themselves to safe management.

Proposals include providing TYC with funding to make the dormitories more secure and to provide correctional officers with up to seven weeks of training. Other suggestions are to fund more programs in the community to divert nonviolent youth from TYC, create smaller TYC facilities, separate younger and older inmates, and increase compensation to attract and retain qualified staff at TYC.

The 80th Legislature may consider legislation to address problems relating to the safety and security of TYC facilities.



EDUCATION - HIGHER

Top Ten Percent

The automatic admission program for students who graduate in the top ten percent of their high school classes allows those students to enroll at the public university of their choice. As a result of automatic admissions, those students now dominate the freshman classes at both major research universities in the state, The University of Texas (UT) at Austin and Texas A&M University (TAMU) at College Station. In 2006, students admitted under the ten percent rule comprised approximately 63 percent of the entering freshman class at UT-Austin and approximately 46 percent of the entering freshman class at TAMU. Those universities state that they no longer are able to admit many highly qualified students on a competitive basis due to the ten percent rule.

Some have proposed excluding TAMU and UT-Austin from the institutions that must provide automatic admissions to the top ten percent of graduating high school seniors or limiting those admissions to a percentage of the freshman class. Other proposed modifications include restricting automatic admissions to a higher percentile of high school classes (such as the top six percent) or instituting a moratorium on the ten percent rule.

The 80th Legislature may consider modifying the automatic admission program.

Tuition Deregulation

The 78th Legislature authorized public colleges and universities to raise tuition rates above the statutorily prescribed level provided that 20 percent of the increased revenue is set aside for financial aid. In September, 2005, the State Auditor's Office (SAO) produced a study of the issue, *State Auditor's Report on the Reasonableness and Results of Tuition Increases Implemented by Four Higher Education Institutions in the 2004-05 Biennium*. The report found that while some institutions of higher education (IHEs) use accounting procedures that allow auditors to trace revenue from tuition increases to the specific use of those funds, others combine all sources of revenue, which prohibits such an analysis.

The 80th Legislature may consider requiring IHEs to develop and implement accounting procedures that track revenue and expenditures from tuition increases separately or to meet outcome measures based on the stated justifications for tuition increases.

Cost-Based Formula Matrix

The 75th Legislature simplified the manner in which state funds are allocated to IHEs by reducing the number of funding formulas from 14 to two: instruction and operations (I&O) and infrastructure. However, the I&O formula is based on enrollment and recommended staffing ratios rather than historic expenditures, as is the case with public schools and community colleges.

In 2002, the Texas Higher Education Coordinating Board (THECB) directed the University Formula Advisory Committee to conduct a cost study to validate the relative weights contained in the university funding matrix. In April, 2004, THECB adopted the cost-based methodology in its formula recommendations.

The 80th Legislature may consider adjusting higher education funding formulas by adopting a cost-based formula matrix.



EDUCATION - PUBLIC

End-of-Course Assessment

There has been some discussion regarding reinstating high school end-of-course assessments in core subjects in place of the 9th-, 10th- and 11th-grade Texas Assessment of Knowledge and Skills (TAKS). In 1995, the 74th Legislature enacted legislation requiring students to pass either the exit-level statewide assessment or end-of-course assessments in Algebra I, English II, and either Biology I or United States history. The end-of-course exams were eliminated by S.B. 103, 76th Legislature, which required the State Board of Education to create a new assessment that tests a broader curriculum and includes an 11th-grade exit-level test that evaluates core academic knowledge and skills needed for success in higher education and business.

The TAKS has been criticized for not ensuring enough accountability with regard to strength of course content and instructor effectiveness. It is argued that end-of-course exams could reduce the variance in course content across the state by ensuring that each student who passes a particular course has actually met the state's mastery standard for that course. End-of-course exams would also guarantee that students are tested directly on the curriculum they are taught soon after they are taught it, thereby increasing teacher "ownership" of the results. For example, under the current testing system, students who take Algebra I in the 8th grade are not tested for mastery of that subject until the 9th-grade TAKS. As a result, the contributions of the 8th- and 9th-grade mathematics teachers cannot be disentangled.

The TAKS has also been criticized for assessing the breadth, rather than the depth, of a student's knowledge of a particular subject. For example, a student can receive a passing score on the exit-level science exam even if he or she misses 100 percent of the chemistry and physics questions on the test. Similarly, the exit-level social studies exam consists of only a small number of questions on a multitude of subjects: history, geography, economics and social influences, political influences, and social studies skills. It is argued that end-of-course exams offer more diagnostic value because they can provide a greater number of questions on each subject area (e.g., separate tests for algebra and geometry as opposed to a single "TAKS Mathematics" test).

Others have cautioned against switching to end-of-course assessments because doing so could increase the overall number of high-stakes tests students are required to take and

force teachers to spend too much time "teaching to the tests." Concerns about over-testing are compounded by the fact that the legislature may also consider requiring all high school students to take a norm-referenced exit-level assessment such as the SAT or ACT in order to compare the college readiness of Texas students to those in other states.

The 80th Legislature may consider the issue of required end-of-course exams as well as mandatory, state-funded SAT/ACT testing for all high school students.

Facilities Funding

The state's public school funding system, the foundation school program (FSP), has three tiers. Tier one supports the education requirements of state law. Tier two provides funds for enrichment to meet community expectations. In 1997, the legislature created a facilities tier, called tier three, and prohibited districts from using tier two tax revenue for facilities.

The instructional facility allotment (IFA) has two parts, one for new facilities debt and another for existing debt. Both are equalized to yield \$35 per ADA. Districts are ranked by property wealth, enrollment growth, and previous eligibility, and TEA distributes facility funds until the funding is exhausted.

To be eligible for IFA, a district must pass a bond election before the state commits to equalize the bond tax yield. The existing debt allotment (EDA) equalizes funding for bonds issued before the current biennium. The statute guarantees that IFA state aid will continue until the bonds are fully paid.

School districts issue an average of \$3 billion in bond debt each year because of the rapid growth in enrollment and the need to update facilities. The legislature appropriated approximately \$1.49 billion in facilities funding for the 2004-2005 biennium. This figure increased to \$1.54 billion for the 2006-2007 biennium.

To make state funding for facilities more predictable, the 80th Legislature may consider combining IFA and EDA into a single allotment. The equalized yield of \$35 per ADA may also be adjusted.

Permanent School Fund (PSF)

The Texas Constitution authorizes the use of the permanent school fund (PSF) to provide financial backing of bond issuances by school districts. With the guarantee of the PSF, school districts enjoy the highest bond rating (triple A) and save funds through low interest rates with no need for bond insurance. State statute and Internal Revenue Service (IRS) arbitrage restricts the amount of bonds guaranteed by the PSF to two-and-a-half times the market value or cost value (whichever is less) of the PSF.

The current bond backing capacity of the PSF amounts to \$45.9 billion with guaranteed bonds totaling \$37.8 billion. According to current projections by the Legislative Budget Board (LBB), the remaining capacity of the PSF will be consumed by new district bond issuances in two to three years. However, the current multiplier of two-and-a-half is not set at the maximum level that allows the triple A rating.

The 80th Legislature may consider legislation to modify the multiplier rate for the PSF to provide additional capacity without a subsequent loss in the rating afforded by the bond-backing guarantee.

Disciplinary Alternative Education Programs (DAEPs)

The 74th Legislature required all school districts to operate a Disciplinary Alternative Education Program (DAEP) to educate disruptive students away from the regular classroom. The 78th Legislature required instructors at DAEPs to be certified teachers. Each year approximately 100,000 students, or about two percent of the Texas public school population, are placed in DAEPs.

Concerns have been raised regarding a lack of accountability of DAEPs. Currently, many DAEPs offer students fewer than seven hours of instruction per day—the minimum required of all other schools—and some offer as little as two. Also, the performance of DAEP students on statewide assessments is linked to the general education campus in which they are enrolled rather than the DAEP they attend. While this aspect of the state accountability system provides an incentive for the general education campus to remain invested in a student's success after placement in a DAEP, it also allows DAEPs to escape accountability as a collective unit for student performance. Little or no data exist concerning whether a student's assignment to a DAEP has any bearing on his or her performance, attendance, discipline, or ability to graduate.

The 80th Legislature may consider legislation relating to accountability measures for DAEPs, including greater monitoring of student outcomes and requiring a full seven hours of instruction per day.

Early Childhood Education

Over the last two decades, prekindergarten programs have become an important part of public education. Research suggests that early childhood education is especially critical for low-income and educationally disadvantaged children. In 1995, the Texas Education Agency (TEA) completed a study of the effectiveness of Texas prekindergarten programs, "Texas Evaluation Study of Prekindergarten Programs." The results indicated that students who attend prekindergarten programs are less likely to be held back, closer to being on grade level in their reading comprehension, and less likely to be referred to special education programs. Former prekindergarten students also score higher on statewide assessments, and this difference is especially pronounced among students with limited English proficiency.

The state currently requires school districts to offer free half-day prekindergarten programs to four-year-olds who have limited English proficiency or are from low-income families. During the 2005-2006 school year, 746 school districts served 111,975 students in free half-day prekindergarten programs.

In 1999, the 76th Legislature appropriated \$200 million for the 1999-2001 biennium to expand half-day prekindergarten programs to full day programs. The prekindergarten expansion grant has been reauthorized by every subsequent legislature, and the 79th Legislature appropriated \$92.5 million for the 2005-2007 biennium. During the 2005-2006 school year, 553 school districts served 69,445 students in free full-day prekindergarten programs using the prekindergarten expansion grant funds.

The 80th Legislature may consider expanding access to free prekindergarten programs.

Textbooks

Electronic textbooks are also an issue of interest this session. The two reasons most often cited for this interest are cost savings and up-to-date content. Currently, an approved textbook cannot be altered during its six-year use cycle, and a significant change would not appear in a traditional textbook until the next adoption. Electronic textbook content can be updated in a more timely fashion.

The 80th Legislature may consider legislation relating to the use of electronic materials.



HEALTH AND HUMAN SERVICES

Medicaid/CHIP

S.B. 43, 77th Legislature, directed the Texas Department of Human Services (DHS) to develop a single application form and set of procedures for Medicaid and the Children's Health Insurance Program (CHIP), including a mail-in option. The bill also required DHS to ensure that Medicaid documentation and verification processes are the same as those for CHIP. S.B. 43 also provided for recertification of eligibility by telephone or mail and 12 months continuous eligibility. Finally, S.B. 43 directed the Health and Human Services Commission (HHSC) to develop procedures to help families who may lose Medicaid coverage either to recertify or to enroll their children in CHIP.

Although the changes enacted in S.B. 43 simplified the process of enrolling in Medicaid, many issues relating to the uninsured and underinsured remained. The 78th and 79th legislatures considered and enacted additional changes to the Medicaid and CHIP programs including, among others, establishing disease management programs for certain Medicaid recipients; implementing cost sharing for Medicaid clients; expanding the Health Insurance Premium Payment System (HIPPS) program that allows the state to pay a Medicaid-eligible employee's share of the premium for employer-based health insurance and extends coverage to the entire family; exploring statewide rollout of enhanced Primary Care Case Management (PCCM) for all Medicaid recipients enrolled in Temporary Assistance for Needy Families (TANF); strengthening the oversight and enforcement of nonpayment and under-payment of providers for services rendered to Medicaid clients by certain Medicaid managed care and CHIP plans; creating a mechanism to evaluate the amount of the premiums paid to CHIP and Medicaid managed care plans annually to ensure that premiums are adequate; increasing reimbursement rates for providers or creating targeted increases to certain underserved areas; reducing the administrative complexity of the Medicaid and CHIP programs; establishing an integrated care management model for Medicaid; establishing an integrated benefits issuance and recipient identification method for Medicaid and other health and human services benefits; establishing preferred drug lists and other pharmaceutical restrictions; and authorizing a Medicaid buy-in program for persons with disabilities.

The federal Deficit Reduction Act of 2005 (Act), signed in February 2006, contains provisions that will give states more flexibility in designing a Medicaid program to meet the needs of their respective populations. While the Act gives states some flexibility in altering their Medicaid programs, it does not give them free rein. Since each state's Medicaid program is unique to that state, the Act will affect states differently.

A number of states have initiated specific reform efforts in response to the Act, including Massachusetts, Vermont, Arkansas, New Mexico, Oklahoma, and Illinois. Of interest to many is the health insurance connector system being implemented in Massachusetts, although the connector will take three to five years to evolve and is in the planning stages. A number of states are considering making payments to employers via Medicaid to encourage the continuation of employer-sponsored health plans, expanding Medicaid coverage for more children, or offering alternative benefit packages.

The Act does allow some benefit flexibility including tailored benefit packages for specific populations, enhanced benefit accounts, private insurance opt-outs, and defined benefit contribution insurance premiums. Kentucky, Idaho, and West Virginia are proposing tailored benefit packages. Kentucky offers four different benefit packages, whereas Idaho offers packages tailored to specific populations such as one for children and one for persons who are elderly or disabled. The Act prohibits the use of benchmark plans for the elderly or disabled and requires that benchmark plans for children have a wrap-around for ESPDT (Early and Periodic Screening, Diagnosis, and Treatment) services, Medicaid's comprehensive and preventive child health program for individuals under the age of 21.

Florida is implementing a defined benefit contribution plan that uses a risk-adjusted approach that can be applied to various benefit packages. Florida's approach will require the state to apply for a Section 1115 waiver. Florida has also established a reinsurance plan to cover catastrophic cases.

Florida, West Virginia, Kentucky, and Idaho offer enhanced benefit credits to recipients who meet certain program requirements or successfully complete behavior modification programs such as participating in a weight-reduction program or smoking cessation program.

Medicaid recipients in Florida and Kentucky are authorized to enroll in private insurance plans; however, if these plans offer fewer benefits than Medicaid, the states will not provide any wrap-around services to supplement the private plans.

The Centers for Medicare and Medicaid Services is working with states individually on changes associated with the Act.

A number of states are looking at the cost-sharing options authorized under the Act. Some have expressed concern that this option may be burdensome to administer because even with the flexibility authorized by the Act, under Medicaid, states are still required to provide care even if the recipient cannot pay the cost-sharing amount and many areas of care such as pregnancy-related services are exempt from cost sharing.

There also is continuing interest among states regarding expansion of community-based services and supports, and a number of states are applying for federal grant funds for programs targeting persons with chronic mental illness and those with disabilities.

According to the Health and Human Services Commission (HHSC), the Texas Medicaid program has made some progress in containing Medicaid costs and the growth rate for 2007, 2008, and 2009 is expected to be about six percent per year. Medicaid consumes 20 to 25 percent of the state's general revenue funds. One key factor in restraining cost growth has been the cap on provider reimbursement rates, but concern has been expressed that the cap discourages provider participation in the Medicaid program.

The Deficit Reduction Act does not offer as much flexibility to Texas as to other states because the state has already instituted many of the changes authorized by the Act. However, changes being made by other states, including California, Florida, and Massachusetts, are under review.

The 80th Legislature may consider additional changes to the state's Medicaid program in light of the Act and continuing growth trends.

A three-share waiver submission and upper payment limit amendments may be considered. According to HHSC, the three-share or some form of alternative payment program could work statewide, but it would require community participation and support and additional evaluation is needed before such a program could be put in place.

Issues relating to uncompensated care and reimbursement rates may also be addressed.

Under the Act, states are required to obtain appropriate documentation to verify eligibility, including residency and citizenship. Changes in the state Medicaid program may be required relating to Medicaid services to illegal immigrants. The more strict citizenship verifications requirements under the Act that apply only to Medicaid and other services such as those provided through federally qualified health centers do not require such verification of citizenship.

Issues related to third party recovery efforts and eligibility changes in the Medicaid long-term care program, including asset protection options, encouraging the purchase of long-term care insurance, and offering some type of off-set under Medicaid for those who have such insurance, may also be considered by the 80th Legislature.

The 80th Legislature may also consider the buy-in option for disabled children to help reduce uncompensated care costs.

Under the Act, 10 states will be allowed to pursue health opportunity account (HOA) waivers. Texas may pursue the HOA application.

The 80th Legislature may also address issues relating to access to health care, especially in rural areas and along the Texas-Mexico border; money-follows-the-person grants; and home and community based services for mental health.

Child Care and Early Childhood Programs

A landmark report on the science of early childhood development by the National Research Council and Institute of Medicine, *From Neurons to Neighborhoods*, concluded that "child care is the context in which early development unfolds, starting in infancy and continuing through school entry for the vast majority of young children in the United States" and that childcare is "second only to the immediate family." The report states that the quality of the experience in child care is critical to the development of young children.

The steady growth of women with young children in the labor force means that increasing numbers of very young children are spending part of their day in settings outside the home. According to a National Conference of State Legislatures (NCSL) report, in 2000, 61 percent of mothers with children under age three were in the workforce and, of the 11 million infants and toddlers in the United States, nearly five million spend time each week in the care of someone other than their parents. The Urban Institute reports that infants and toddlers of working mothers spend, on average, 25 hours per week with non-parental providers, and that two out of five children under age three are in care full time.

This growth has led to the demand for child care and early education programs that are appropriate for working families and those seeking early educational experiences for their children. Changes in federal welfare law initiated new activity requirements for low-income parents and additional funding for child care for families on welfare and those making the transition to employment. Policy changes combined with research findings that suggest that early intervention and education are critical to long-term child brain development and achievement have prompted policymakers to consider improvements in child care.

States generally have focused on birth to age five, developing coordinated systems of early childhood care and education, educating parents, expanding private sector involvement, and improving coordination and alignment of programs to maximize limited funding sources. The need for improved evaluation and assessment capabilities has emerged as a key issue.

Efforts to promote school readiness have added momentum to the effort to improve the quality of infant and toddler care.

Congress recently passed funding for early childhood services including an \$817 million increase in the Child Care and Development Fund, including a \$100 million set-aside to improve infant and toddler care, and a \$933 million expansion of Head Start. The Early Childhood Opportunities Act targets services for very young children through age five and provides an additional source of funding. Congress also authorized the transfer of TANF funds into child care.

State policymakers have also begun focusing on early childhood programs. According to NCSL, state spending for child development and family support programs targeting infants and toddlers has more than doubled since 1998. Recent state actions reported by NCSL, in addition to expansion of funding, have focused on measures designed to ensure safe and healthy care for infants and toddlers, improve access to quality infant and toddler care, and regulatory improvements.

Legislators in some states altered their states' agency structures. Colorado, for example, established local early care and education councils to administer subsidies to local providers and Maryland transferred the Child Care Administration from the Department of Human Resources to the Department of Education.

Nine states passed laws that created an early childhood regulatory entity or expanded stakeholder involvement and five states created task forces or study groups to examine various elements of early childhood education.

States have improved child care subsidy and school readiness programs connected to the welfare system to enhance professional development and improve quality. Arkansas, Florida, Iowa, Louisiana, Pennsylvania, Tennessee, and Vermont increased funding for child care assistance programs. Iowa also increased provider reimbursement rates. Other states have considered issues related to recruitment, training and education, retention and professional development of teachers, and licensing and regulation to ensure that health and safety concerns are met.

Despite evidence that child-to-adult ratios, group size, and staff training affect the quality of child care, many states have not established standards for these elements. The Maternal and Child Health Bureau of the U.S. Department of Health and Human Services (HHS) funded the development of the National Health and Safety Performance Standards and *Stepping Stones to Caring for Our Children*, which describes key steps that states can take to help protect children from harm. These documents are available to assist states in reviewing and improving their licensing standards. Some states have amended their regulations to require lower child-to-staff ratios. Other states have taken steps to improve enforcement and monitoring.

Across the country there is a shortage of child care for children with special needs, including infants and toddlers. Several states have taken steps to help meet this unmet

need, including increasing reimbursement rates, providing disability coordinators in resource and referral agencies, and providing special funding for equipment to meet licensing standards.

States have also begun to invest in Early Head Start expansion. Six states (Kansas, Missouri, North Dakota, North Carolina, Minnesota and Oklahoma) use either state dollars or federal welfare funds to supplement Early Head Start. Nevada provides "wrap-around" funds to all Early Head Start programs to extend the hours of care in a day.

Good training and appropriate compensation for infant and toddler care providers are key issues to ensuring quality. The federal Child Care and Development Block Grant has helped states train providers and states have initiated other programs to provide training, technical assistance, and quality improvement grants to child care centers and homes, access to college courses for providers, and special credential programs for providers. Some states—Oklahoma, Maine, Missouri, and Washington—are providing increased reimbursement rates to expand the supply of quality care available specifically for infants and toddlers.

Concerns about the quality of child care workers and the potential for abuse and neglect has also prompted action in a number of states including California, Minnesota, and Wisconsin. These states' laws identify certain crimes, acts, or offenses that bar individuals from holding a child care license or from being employed by, or residing at, a child care center. Requirements for pre-employment criminal background checks are increasingly used.

California's welfare-to-work program, CalWORKs, provides families with paid child care while they are working or participating in CalWORKs activities. Families may choose unlicensed—or license-exempt—child care providers who are either relatives or individuals taking care of their children and one other family's children in the child's or provider's home. License-exempt providers who wish to receive payments for subsidized child care under CalWORKs or California Department of Education programs are required to be screened and pass a criminal and child abuse background check. The state pays the cost of the background checks.

A number of states have focused on the importance of good parenting to enhance child development by offering education or training to parents with very young children and targeting families with newborns or first time parents for additional support services.

To promote the parent-child relationship during the earliest years, states have also developed an array of options, including paid family leave, funds, tax exemptions for parents who choose to stay at home with their baby, and exemptions from welfare to work requirements during a child's first year.

The 80th Legislature may consider options to address the issue of access to quality child care and to ensure the safety and well-being of children in child care settings by requiring criminal and child abuse background checks and fingerprinting for child care providers.

Stem Cell Research

On August 9, 2001, President George W. Bush announced that federal funds could be awarded for research using human embryonic stem cells if the following criteria are met: the derivation process (which begins with the destruction of the embryo) was initiated prior to 9:00 p.m. on August 9, 2001; the stem cells were derived from an embryo that was created for reproductive purposes and was no longer needed; and informed consent was obtained for the donation of the embryo and that donation must not have involved financial inducements. Legislation that would loosen those restrictions to allow use of stem cell lines created after that date was passed by Congress in 2006, but was subsequently vetoed by the president. The United States prohibits federal funding of any kind of embryo cloning.

The debate among scientists, ethicists, and policymakers regarding embryonic stem cells is likely to continue. According to scientists, embryonic stem cells are undifferentiated cells that are unlike any specific adult cell, but have the ability to form any adult cell. Undifferentiated embryonic stem cells in a culture can proliferate indefinitely and potentially provide an unlimited source of specific adult cells such as bone, muscle, liver or blood cells. Human embryonic stem cells generally are derived from fertilized embryos less than a week old.

Embryonic stem cells are of great interest to medicine because of their ability to develop into virtually any other cell made by the human body. Theoretically, if stem cells can be grown and their development directed in culture, these cells would enable scientists to grow human tissue that could be used to treat a range of cell-based diseases and for transplantation purposes. For example, diseases such as juvenile diabetes and Parkinson's disease could be treated by injecting healthy cells to replace damaged or diseased cells.

Adult stem cells are unable to proliferate in culture. Unlike embryonic stem cells, which have a capacity to reproduce indefinitely in the laboratory, adult stem cells are difficult to grow and their potential to reproduce diminishes with age.

Although scientists are utilizing mature stem cells, because adult cells are already specialized, their potential to regenerate damaged tissue is limited. Embryonic stem cells, which have the capacity to become any kind of human tissue, are considered by some to be the only stem cells that have the potential to repair vital organs. Others disagree and believe that adult stem cells offer significant potential for research.

Other types of cells are also being studied. Researchers at Harvard University, for example, have converted skin cells into stem cells through a complex fusion process. While some argue that using this type of cell fusion could work better than using an egg for human stem-cell therapy, the researchers who conducted the fusion research acknowledge that significant obstacles remain, and have cautioned that the fused cell contained twice the genetic material that cells usually carry and there is no known way to return it to normal. The researchers suggest that such cells would be extremely risky to use for therapies in humans, but may be valuable for research.

Stem cells from cord blood are also the subject of ongoing research. This work is part of a broader effort to find ways to conduct embryonic stem-cell research without destroying embryos.

In 2004, California voters approved the largest government-funded research program on embryonic stem cells in the country. California's initiative provides \$3 billion in state bonds over 10 years. Also in 2004, New Jersey set aside \$6.5 million to recruit researchers for the state's Stem Cell Institute.

State laws on embryonic stem cell research vary widely, according to the National Conference of State Legislatures. Some states restrict or prohibit research on embryos—South Dakota strictly forbids embryonic stem cell research and Louisiana bans research on stem cells from embryos left over from in vitro fertilization. Illinois and Michigan prohibit research on live embryos while Arkansas, Iowa, Michigan, and North Dakota prohibit research on cloned embryos. California, Missouri, New Jersey, and Rhode Island allow cloning for research, but prohibit cloning for the purpose of initiating a pregnancy.

Other state laws focus on funding for stem cell research. Nebraska bans the use of state funds for embryonic stem cell research. Kansas law provides funding for stem cell research but precludes the use of cells from induced abortions. Virginia lawmakers authorized funding for stem cell research, but limited the study to sources other than embryos such as bone marrow or umbilical cord blood.

Indiana, Ohio, and Virginia provide state funding for adult stem research or create mechanisms to channel future state funding, gifts and donations to public research programs. In 2003, Ohio legislators appropriated \$19.5 million to establish the Center for Stem Cell and Regenerative Medicine, which focuses on adult stem cells. Indiana legislators allocated funds in 2005 to Indiana University for planning and development of an adult stem cell research center. Also in 2005, the Virginia legislature established a fund to support adult stem cell research with funding from the state or other sources; however, no public money was appropriated.

Stem cell research is still in its infancy. As science and technology continue to advance, so do ethical viewpoints surrounding these developments. Witnesses who testified before the Senate Health and Human Services Committee stated that while other countries like New Zealand, Australia, England, France, and Singapore are rapidly moving forward with stem cell research, the United States and Texas, in particular, are lagging behind. Others suggested that Texas researchers focus on options other than embryonic stem cells. The 80th Legislature may consider legislation and/or funding issues relating to stem cell research.

Obesity

Obesity has become a pressing public health concern. The Texas Department of State Health Services reports that in 2005, an estimated 10.4 million or 64 percent of Texas adults were overweight or obese. If the current trends continue, 20 million or 75 percent of Texas adults might be overweight or obese by the year 2040, and the cost to Texans could quadruple from \$10.5 billion today to as much as \$39 billion by 2040.

In the past 20 years in the United States, the number of overweight children and adolescents ages six to 19 tripled. In this age group, 16 percent of children and adolescents, or nine million children nationwide, are overweight. A study published in the April 5, 2006, issue of the *Journal of the American Medical Association* found that 17.1 percent of children and adolescents ages two to 19 were overweight.

The prevalence of childhood overweight was greater in Texas, in 2005, than rates nationwide, with the overall prevalence of overweight and at-risk for overweight in Texas children reported at 42 percent for fourth-graders, 39 percent for eighth-graders, and 36 percent for eleventh-graders. The percentage of overweight students in Texas was much higher among minorities, with the highest prevalence of overweight in Hispanic boys in all grade levels, Hispanic girls in fourth grade, and African American girls in the fourth and eleventh grades.

Thirty percent of Texas high-school students are overweight or at risk of becoming overweight.

Being overweight puts children and teenagers at greater risk for a number of serious health conditions, including Type 2 diabetes, risk factors for heart disease, asthma and sleep apnea, and psychosocial effects such as decreased self-esteem. Obese children also are more likely to become obese adults. By adulthood, obesity-associated chronic diseases—heart disease, some cancers, stroke, and diabetes—are leading causes of death in the United States and medical costs attributable to obesity and related conditions are estimated to be in the billions.

Despite the proven benefits of physical activity, most Americans do not get enough physical activity to provide health benefits and only about one-fourth eat five or more servings of fruits and vegetables each day. Healthy eating and a physically active lifestyle can help children achieve and maintain a healthy weight and reduce obesity-related diseases. Legislators and public health officials throughout the nation have been actively working to develop childhood obesity policy options to address the crisis.

S.B. 42, 79th Legislature, 2005, requires school districts to emphasize nutrition and exercise in the health curriculum, authorizes the State Board of Education to expand participation in physical education, requires school districts to report certain health and activity data to the Texas Education Agency, and establishes the School Health Advisory Committee to assist the State Health Services Council with school health programs and services. Legislation relating to body-mass index (BMI) reporting was also considered by the Texas Legislature, but was not enacted. *The Strategic Plan for the Prevention of Obesity in Texas: 2005-2010* provides a framework for combating obesity in Texas.

The National Conference of State Legislatures reports that in 2005, state legislatures in at least 39 states considered or enacted legislation related to the nutritional quality of school foods and beverages. Seventeen states enacted school nutrition legislation. Other states considered or enacted policy approaches to address childhood obesity such as nutrition education or wellness initiatives in schools, body mass index measurement and reporting, increased physical activity during the school day, improving the nutritional content of school foods, or taxing or prohibiting snack foods with minimal nutritional value.

Legislation requiring the provision of nutrition content information for foods on school menus or all foods and beverages served in schools was enacted in at least three states and other states enacted bills requiring nutrition education as a component of school health curriculum.

In 2005, a number of states considered or enacted student body mass index (BMI) legislation—Missouri, Tennessee, and West Virginia enacted bills. Arkansas, the first state to enact BMI legislation, considered legislation to repeal the state's requirement for confidential reporting of student BMI information to parents; the bill failed to pass.

California enacted legislation that requires non-invasive screening of four diabetes risk factors in female seventh graders and male eighth graders for type 2 diabetes risk, including measurement of BMI. Illinois also enacted legislation to require non-invasive screening, risk analysis, or testing of school children for diabetes. In 2005, Texas enacted legislation to facilitate the prevention, diagnosis or treatment of type 2 diabetes in school children.

Legislation to provide or strengthen private insurance coverage for obesity prevention or treatment was also considered in a number of states. Georgia, Indiana, and Virginia

currently require private insurers to offer general coverage for morbid obesity; Maryland requires insurers to cover morbid obesity treatment including surgery. Medicare also now recognizes obesity as a medical problem, offering coverage for obesity treatments that have been demonstrated as scientifically effective.

Forty-eight states require some level of physical education in schools, but the scope of the requirement varies widely.

The federal Child Nutrition and WIC Reauthorization Act of 2004 requires each local school district participating in the national school lunch and/or breakfast program to establish a local wellness policy. School districts are required to establish a plan and set goals for nutrition education, physical activity, campus food provision, and other school-based activities designed to promote student wellness.

An innovative approach in the battle against childhood obesity includes a Delaware state income tax deduction to be credited to the Delaware Juvenile Diabetes Fund through the Delaware Juvenile Diabetes Foundation.

Illinois created a school health recognition program to publicly identify schools that have implemented programs to increase physical activity and healthy nutritional choices for their students. Illinois also established a Diabetes Research Check-off Fund from an income tax check-off and requires the Department of Human Services to make grants from the fund for diabetes research, including a certain percentage of grants for juvenile diabetes research.

Efforts are underway to raise awareness and encourage healthy eating and a more active lifestyle.

The 80th Legislature may consider options to address the obesity epidemic by considering a variety of policy approaches to facilitate opportunities for a healthier diet and more exercise beginning in childhood.

Immunizations

At the turn of the 20th century, thousands of citizens became ill or died from a wide range of highly infectious diseases, such as smallpox, measles, diphtheria, polio, tuberculosis, and pertussis. Immunizations became one of the most important health discoveries of the century and the use of vaccines to combat such diseases is one of the greatest achievements of public health.

Fully immunized children provide a barrier between illness and children who are not fully immunized or who are unable to be vaccinated due to medical or other reasons, thus preventing the spread of the illness. Herd immunity, the immunity of the population as a whole, is more effective as the number of vaccinated persons increases. There are 13 serious diseases that are preventable through a regimen of nine vaccines.

Incidents of unusual or serious reactions, while rare, have contributed to vaccine-related fears, and most states, including Texas, have incorporated authorized exemptions in their immunization requirements.

The immunization rate for Texas children increased 11 percent in 2005, moving the state up in the national rankings from 41st in 2004, to number 24, according to recent statistics from the Centers for Disease Control. The CDC's National Immunization Survey, which tracks immunization rates among preschool children, found that the Texas rate for a key vaccine series was 76.8 percent in 2005. It is the first time since the survey's inception in 1995 that Texas ranked above the national average.

The National Immunization Survey provides vaccination coverage estimates for children 19 through 35 months of age. State rankings are based on the percentage of children completing the 4:3:1:3:3:1 series of immunizations. That series includes four doses of diphtheria, tetanus and pertussis (DTaP), three doses of polio vaccine, one dose of measles-containing vaccine, three doses of Hib vaccine, three doses of hepatitis B vaccine, and one dose of varicella vaccine.

In 2003, Governor Rick Perry signed an executive order directing the Texas Department of Health (now the Department of State Health Services) to implement a comprehensive plan to increase immunization rates statewide. The 78th Legislature, in 2003, enacted H.B. 1921, relating to the immunization registry, which authorized a parent, managing conservator, or guardian of a child to submit the child's immunization history to the department to be included in the immunization registry. H.B. 1920, also enacted in 2003, required DSHS to develop continuing education programs for providers relating to immunizations and the vaccines for children program operated by the department under authority of 42 U.S.C. Section 1396s, as amended and to establish a work group to include representatives of the public, private, and community sectors. In 2005, the legislature enacted S.B. 1211, adding information about respiratory syncytial virus under certain continuing education programs operated by DSHS and S.B. 1330 relating to the immunization of elderly persons by certain health care facilities.

The Texas Immunization Stakeholder Working Group (TISWG) was established in 2004 based on legislation passed by the 78th Legislature to increase partnerships across the state to raise vaccine coverage levels and to improve immunization practices for all Texans. TISWG recommendations incorporate the best practices known nationally to raise vaccine coverage levels for both children and adults, including increasing

partnerships; promoting the use of a medical home for all comprehensive care, including immunizations; using reminder recall systems to draw patients back to their physicians to complete each series of recommended childhood vaccinations; using immunization registries; and improving parent, public, and provider education to keep citizens abreast of new vaccine information.

In 1994, TDH established an immunization tracking system, ImmTrac, to monitor the immunization rates for children across Texas. Currently, ImmTrac stores over 54 million immunization records for more than 5.2 million Texas children. Health plans and payors are also required report to ImmTrac all immunizations for which a claim has been paid within 30 days of receiving claim information from providers.

Despite significant improvements, the current ImmTrac system does not provide a complete picture of immunization rates or status in Texas or accurate immunization records for individual children. Parents must consent or “opt in” before providers can submit immunization information to ImmTrac. Hospital registrars, nurses, and other health professionals must obtain parental consent for each child each time a vaccine is given. An “opt out” system would include all children automatically unless a parent chose to remove his or her child from the system. Proponents of an “opt out” system suggest that a strict “firewall” could be developed that would automatically delete information on those who have opted out of the system which would address confidentiality and medical privacy concerns. The modified system could support a recall and reminder campaign, provide centralized record-keeping, and identify particular areas of the state with low immunization rates, thus enabling TDH to develop targeted responses.

Despite the significant level of improvement, the problem of low immunization rates remains and continues to pose a threat to public health. The National Vaccine Advisory Committee (NVAC) identified several key barriers to timely vaccinations. For families and communities, the most significant barriers continue to be those related to poverty. Being uninsured or underinsured are also barriers to obtaining timely and appropriate health care. Finally, understanding, beliefs, and attitudes of parents can be important barriers to vaccinations; the most critical of these factors are a belief that the timing of vaccinations is unimportant and parents not knowing when vaccines are due.

A consistent medical home may help raise vaccine coverage levels. A “medical home” is a partnership between a child, the child’s family, and the child’s primary health care setting that coordinates comprehensive health care services.

NVAC also recognized specific provider practices and beliefs that contribute to under vaccination. These include the lack of reminder/recall systems or any system to identify undervaccinated children in their practice and failure to adequately assess immunization status at all visits—particularly sick child visits.

Immunization service delivery in Texas is complicated by many factors, including the size, demographics, and division of Texas into 254 counties under local jurisdictions which make standardization difficult. Limited data on vaccine coverage levels complicate efforts to monitor the effect of immunization activities. Children, who are uninsured, underinsured, who lack a medical home, or who live in rural areas of the state or in counties along the Texas-Mexico border typically have limited access to health care.

Texas leads the nation in the number of uninsured and underinsured children. According to the data presented in the 2005 National Survey of Children's Health, 40 percent of children in Texas have a personal doctor or nurse and receive care that is accessible, comprehensive, culturally sensitive, and coordinated; 25 percent of Texas children lack consistent insurance coverage. In 2005, over 2.6 million Texas children were on Medicaid. Many of these children are not receiving the complete series of immunizations required to protect them from vaccine-preventable diseases on time.

The 80th Legislature may consider ways to develop and implement strategies to enhance access to or participation in medical homes for all children in Texas; to promote best practices and increase coordination among health and early childhood services for children birth to five years of age; to improve access to insurance and ensure that immunizations are available in the child's medical home; to promote an inclusive, fully-populated, fully-functional immunization registry; to promote improved coordination and standardization between IMMTRAC and local immunization registries that provide for collaboration and common data protection standards to facilitate data exchange between ImmTrac and local immunization registries; to facilitate the capability to share data using the Health Level Seven (HL7) Protocol, which is the preferred method for health data sharing and exchange; to expand the Texas Vaccines for Children (TVFC) Program and ensure quality of TVFC providers; to promote and enhance public/parent education and immunization media campaigns designed to target underserved populations, general populations, and private providers; and to expand or enhance immunization services to reach traditionally underserved populations.

Pandemic Influenza Preparedness

A flu pandemic, or global disease outbreak, occurs when a new influenza virus emerges for which people have little or no immunity, and for which there is no vaccine. It is difficult to predict when the next influenza pandemic will occur or how severe it will be. Health professionals are concerned that the continued spread of the avian H5N1 virus across Asia and other countries represents a significant threat to human health.

Since 2003, a growing number of human H5N1 cases have been reported in Asia, Europe, and Africa and more than half of those infected with the H5N1 virus have died.

The majority of these cases are believed to have been caused by exposure to infected poultry.

Avian (bird) flu is caused by influenza A viruses that occur naturally among birds. Wild birds carry avian influenza viruses in their intestines. The virus is very contagious among birds and can cause illness and death in some domesticated birds, including chickens, ducks, and turkeys. Domesticated birds may become infected with avian influenza virus through direct contact with infected birds or through contact with surfaces or materials that have been contaminated with the virus.

The H5N1 virus is highly pathogenic, has an extremely high mortality rate among birds of 90 to 100 percent, and has crossed the species barrier to infect humans. H5N1 is the most deadly of the avian flu viruses that have crossed that barrier. Most cases of H5N1 influenza infection in humans have resulted from contact with infected poultry or contaminated surfaces. Because these viruses do not commonly infect humans, there is little or no immune protection against them in the human population.

Symptoms of avian influenza in humans have ranged from typical human influenza-like symptoms to severe respiratory diseases and life-threatening complications.

There currently is no commercially available vaccine to protect humans against H5N1 virus and a vaccine cannot be produced until a new pandemic influenza virus emerges and is identified. The National Institute of Allergy and Infectious Diseases (NIAID) is working to develop pre-pandemic vaccines based on current lethal strains of H5N1 and to increase the nation's vaccine production capacity.

Studies are also being done to determine whether some of the prescription medicines approved in the United States for human influenza viruses will work in treating avian influenza infection in humans or whether such viruses are resistant to these drugs.

A pandemic comes and goes in waves, each of which can last for six to eight weeks, and causing high levels of illness, death, social disruption, and economic loss. Health care facilities could be overwhelmed, creating a shortage of hospital staff, beds, ventilators, pharmaceuticals, and other supplies. Given that the need for vaccine is likely to exceed supply and the supply of antiviral drugs is likely to be inadequate early in a pandemic, officials will have to make difficult decisions regarding who gets such drugs and vaccines.

The Texas Department of State Health Services has been working to ensure Texas' preparedness should a pandemic occur. DSHS has worked with stakeholders to create a statewide pandemic influenza plan and to assess the preparedness of regional and local health departments to identify issues related to preparedness and resources needed to improve preparedness, and communication, and collaboration with official animal health

agencies and industry organizations. DSHS has also been working on programs to educate the public and health care providers. The Texas Pandemic Influenza Plan will be submitted to the federal government on February 1, 2007.

The 80th Legislature may consider issues relating to the state's preparedness for a pandemic influenza outbreak, including resource allocation and laws pertaining to movement, activity restrictions, and quarantine; healthcare services, emergency care, and mutual aid; and maintaining public order.

Long-Term Care

The projected growth in the state's overall population combined with an aging baby-boom population is creating concern about the sustainability of the state's long-term care system. Beginning in 2006, baby boomers began turning 60 years old and the population of those aged 65 and older is projected to grow 258.2 percent between 2000-2040, increasing from 2.1 million to 7.4 million. While 20 percent of the general population has a disabling condition, that percentage increases to 47 percent in the 65 and older age group. Individuals who are classified as "aged and disabled" represent 20 percent of the people on Medicaid in Texas, but they account for 62 percent of the expenditures of the Medicaid program.

Current estimates indicate that 25 percent of American families are providing care to an aging family member and national surveys indicate that relatives care for 75 percent of older people who have a disability. This informal long term care system is experiencing stress as the pool of family caregivers shrinks and those caregivers age. Thus, more citizens will turn to the state for long-term services and supports and many of those persons will want community-based services and supports. There is a growing trend to choose community services both nationally and in Texas. Since 1985, community services in Texas have more than doubled, while institutional care models have remained constant or declined.

Many Texans mistakenly believe that the Medicare and Medicaid programs will meet the long-term care needs for the aging Texas population and do not plan carefully for their retirement and end-of-life period.

Nursing home costs are one of the largest expenditures in the Texas Medicaid long-term care category. Texas policymakers will likely consider additional Medicaid cost-containment options, many of which affect long-term care programs and services.

In addition to expenditures for nursing facility care and intermediate care facilities for the mentally impaired, Texas also has a large personal care program which is funded with

both Medicaid funds and state general revenue. The number of Medicaid-eligible people receiving services under the personal care program is also increasing substantially.

Strategies implemented by the 78th Legislature to control costs in long-term care programs include: reducing rate reimbursements for nursing homes; revising income eligibility requirements for nursing homes to tighten admissions; transforming reimbursement systems from cost-based methods to prospective payment systems; enhancing estate recovery and asset transfer recoupment from Medicaid beneficiaries; capping the enrollment of some waiver programs; placing tighter limits on personal care services; and capping long-term care per diem costs.

In order to provide quality long-term services and supports, Texas must have a stable provider system with qualified, skilled workers and with provider rates that are sufficient to maintain financial stability. Assessing the quality of care in nursing homes and assisted living facilities and working to improve quality through more appropriate regulation and inspection will likely continue to be issues. Finding ways to increase the numbers of direct care workers in long-term care and provide incentives to nursing homes, home care agencies, and other long-term care providers to recruit and retain these workers also remain issues of concern.

In fiscal years 2004 and 2005, provider rates for ICF-MRs were reduced by 3.5 percent below 2003 levels, while rates for HCS and CLASS providers were reduced by 2.2 percent below 2003 levels. The 79th Legislature authorized a Quality Assurance Fee (QAF), the revenues from which would restore these rates to 2003 levels. The 80th Legislature will likely address issues relating to restoration of and increases in provider reimbursement rates.

Poor diet and physical inactivity are increasingly emerging as leading preventable causes of death. The concept of healthy aging is based on evidence that attitudes and lifestyle behaviors can enhance the body's resistance to and recovery from functional decline. Research suggests that positive healthy lifestyle behaviors such as physical activity, smoking cessation, and nutrition can contribute to an individual's health status even when those behavior changes begin late in life. Research shows that physical activity is healthy for people of all ages, including the older population, and that that physical activity can reduce the risk of chronic diseases, increase strength and balance to prevent injuries common to aging, relieve symptoms of depression, and help maintain independent living.

Comprehensive, multi-faceted programs are needed to address the problems facing aging Texans.

Texas is one of six states selected by the federal Department of Health and Human Services to participate in a long-term care planning promotion campaign called "Own Your Future." The "Own Your Future" campaign targets Texans age 45 to 65 and

encourages them to begin planning for their long-term care needs, including making decisions regarding long-term care insurance, retirement savings, advanced care planning and advanced directives, and physical fitness.

Texas was also selected as one of 16 states to receive federal grant funds for programs to improve the health and quality of life for older Americans. Texas will receive \$250,000 for fiscal year (FY) 2007, \$300,000 for FY 2008, and \$300,000 for FY 2009.

The 80th Legislature may consider programs designed to encourage Texans, particularly aging Texans, to lead active, healthy lifestyles.

Long-Term Care Insurance

The Deficit Reduction Act of 2005 (Act) increases penalties for those who transfer assets for less than fair market value during the five years preceding Medicaid eligibility and makes individuals with home equity above \$500,000 ineligible for nursing home benefits. The Act also lifts the moratorium on states operating a Long-Term Care Partnership Program that allows an individual who purchases long-term care insurance to protect more assets if he/she later needs nursing home care under Medicaid. Some suggest that purchasing private long-term care insurance to cover nursing home care would alleviate the growing pressure on Medicaid.

Medicaid provides assistance to individuals who meet poverty guidelines and have exhausted personal resources. Medicare pays for hospital and physician care for all seniors, but long-term nursing home services are not covered under Medicare.

Private long-term care insurance was first established in 1987, and while sales have been growing, an estimated six million people currently have such coverage. Most purchasers have been affluent since the price of a long-term care policy has not been affordable for most elderly people who are generally on fixed incomes. The likelihood of developing conditions that result in long-term care needs increases substantially with age; however, the uncertainty about the risk of future disability and the corresponding need for services, coupled with the expense, makes many people reluctant to purchase private long-term care coverage. Furthermore, private long-term care insurance is not available to people who already have long-term care needs.

Although LTC Partnerships have been operating in California, Connecticut, Indiana, and New York since the early 1990s, enrollment in those states remains limited. LTC Partnership programs under Medicaid enable individuals to become eligible for Medicaid after their private insurance is exhausted and allow these individuals to keep a higher level of assets. The existing LTC Partnership programs have attracted upper middle-class

individuals. Fewer than two percent of the policyholders have received long-term care insurance benefits or accessed Medicaid benefits since the programs began; thus a determination of whether these programs increase or reduce Medicaid spending has not been possible.

Despite the limited data available regarding the efficacy of long-term care insurance, efforts to stimulate the purchase of such policies will continue to be of interest as a means of helping to control Medicaid budgets. To encourage the use of long-term care insurance, the 80th Legislature may consider implementing a federally-approved Partnership Program authorized by the federal Deficit Reduction Act of 2005, a public-private partnership designed to encourage those with moderate income to purchase private long-term care insurance.

Hospital Price Transparency

As consumer-directed health care becomes more prevalent, the need for price transparency has emerged as an important topic. Health and Human Services Secretary Mike Leavitt has advocated for greater price transparency and consumer access to cost information. Leavitt has stated that patients must be given information on the estimated overall cost of a procedure, how much their insurer will pay, and how much they will be expected to pay to allow patients to become informed health care purchasers. On August 22, 2006, President Bush issued an Executive Order directing federal agencies that administer or sponsor federal health insurance programs to increase transparency in pricing and quality, adopt health information technology standards, and promote quality and efficiency in health care. It has been suggested that providing consumers with information on the price and quality of health services is necessary if more free-market principles are to be brought into the health care system.

The growth of high-deductible health insurance and the continuing rise in the number of uninsured are also contributing to this effort to give consumers more information about what they spend on health care.

At least 30 states have considered or enacted state legislation affecting disclosure, reporting and transparency of hospital and health care charges and fees. For example, cost information for Arizona, California, and Florida hospitals and nursing home facilities is published on state-maintained web pages. Massachusetts already has a website but, as part of a new health care reform law, the state will expand the website to allow consumers to compare the quality of hospitals and clinics, as well as the average payment each charges for a range of services and the cost of prescriptions at individual pharmacies. The Maryland Health Care Commission provides consumers with an online hospital pricing guide that lists, for each acute care hospital in Maryland, the number of

cases, the average charge per case, and the average charge per day for the 15 most common diagnoses. States like New Hampshire, Oregon, and Louisiana have voluntary reporting programs.

Several private companies, including Aetna and Cigna, provide consumers with online access to certain cost and quality data for select services. Access to the information on such sites is often restricted to member consumers.

The *Houston Chronicle* recently reported that Cigna, with 750,000 Texas members, has expanded the number of cost-efficiency and quality ratings it publishes online while Aetna is developing a price-transparency program that reports the fees by specific doctors for 25 of its most commonly delivered services. Aetna, which has approximately two million Texas members, has not yet introduced the program in Texas.

The Centers for Medicare and Medicaid Services (CMS) also posts online the cost and Medicare payment rates for certain procedures performed at ambulatory surgical centers and inpatient hospitals.

During recent legislative sessions, a number of states considered or enacted bills to address transparency issues. Alabama's legislature considered a bill that would require a hospital that receives government funding to disclose the prices that it charges patients who pay negotiated rates for the same medical services and an itemized description of the costs used to calculate those prices on the patient billing. The bill did not pass.

Arizona enacted a bill that requires the Arizona Department of Human Services to implement a uniform patient reporting system for all hospitals, outpatient surgical centers, and emergency departments, including average charge per patient, average charge per physician, and to publish comparative reports of such charges.

The California Legislature passed the Hospital Transparency Act of 2005, which amends current state law to require the Office of Statewide Health Planning and Development to compile and publish on its website the top 25 most common Medicare diagnosis-related groups and the average charge for each by hospital. That bill was subsequently vetoed. Another bill that was signed into law requires that hospitals disclose prices for the 25 most common outpatient services or procedures, and requires that a person be provided, upon request, a written estimate of charges for the health care services that are reasonably expected to be provided and billed to the person if the person does not have health coverage.

California law also requires that a hospital provide a person without health coverage with a written estimate of the amount the person will be required to pay for the health care services, procedures, and supplies that are reasonably expected to be provided by the

hospital, based upon an average length of stay and services generally provided for a patient with that diagnosis.

Governor Perry, in Executive Order RP61, October 9, 2006, established the Texas Health Care System Integrity Partnership to promote quality and price transparency, among other issues, and mandated that it submit a report to the governor, lieutenant governor, and speaker of the house by March 1, 2007. Prior to the governor's executive order, Texas legislators had begun examining cost transparency by health care providers and access to that information by patients.

Among the issues that have been raised:

- Consumers should receive a “point of decision” estimate for the cost of potential treatment with indicators for quality in non-emergency situations.
- All charges associated with treatment should be included in the point of decision estimate, unless the disclosure is prevented by medical emergency.
- Consumers should have access to a website where they could compare medical facilities on the basis of cost and quality factors.
- Hospital charge masters should be disclosed to consumers.

The 80th Legislature may consider legislation designed to encourage transparency for health care cost information to enable Texans to make informed health care decisions.

Children with Developmental Disabilities

There are approximately 425,000 Texas children under age 21 with disabilities. The primary state programs providing services and supports to these children include Medicaid, Medicaid waiver programs, and general revenue funded community care programs. During the past few years, Texas has made progress in improving services for families and children, particularly community-based services.

Family supports include service coordination and case management, respite care, attendant care and nursing services, parent training and support, assistive technology and durable medical equipment, behavioral supports, minor home modifications, specialized therapies, adaptive aids, medical supplies, and pre-vocational training.

The legislature and health and human services agencies staff have focused on finding ways to improve systems and increase opportunities for families. Recent initiatives include improved permanency and statewide training initiatives required by S.B. 40, 79th Legislature, 2005; targeted funding for community waivers for children in institutions;

targeted funding for youth with disabilities aging out of foster care; continuation of the Family-Based Alternatives Project begun in 2002; expansion of Medicaid Waiver Services slots; expansion of consumer directed services (CDS); and working to establish a personal care services for children program.

Advocates suggest that despite recent efforts, unmet need continues to exist in Texas and is complicated by limited resources, the state's geographic diversity and vast rural areas, workforce shortages, and program structure which silos services. The 80th Legislature may consider legislation to address issues relating to services for children with disabilities including methods to increase resources for community-based services and redesign certain programs; reduce waiting lists for community-based services; improve coordination among waiver programs and increase flexibility of waivers to meet the needs of the child; consolidate waiver programs; provide services based on functional needs through a coordinated case management system; expand transition services; address the shortage of direct care workers; establish Medicaid buy-in options authorized by the federal Deficit Reduction Act of 2005; expand “money-follows-the-person” to include the Intermediate Care Facilities for Persons with Mental Retardation program; ensure ongoing transition-to-families funding for children residing in institutions; revise the level of care system and adoption subsidies for children with developmental disabilities to ensure access to a family and the necessary supports and services; and establish standards for mobility-related equipment to ensure provider quality and accountability.

Telemedicine

The potential networks of both hub and remote site providers for telemedicine services in Texas are significant. However, current reimbursement policies do not provide additional funds for the necessary telecommunications infrastructure, and many potential providers are hesitant to make the initial investment necessary to become a telemedicine provider. The Texas Medicaid program already reimburses for the use of clinically sound digital medical imaging through telemedicine. HHSC has adopted the position that clinically appropriate digital medical imaging includes only those technologies and techniques that can be used to capture the full scope of information that might be needed for a proper diagnosis by a licensed provider acting within standard clinical guidelines. The digital medical imaging also must provide information that is not accessible without the use of such imaging.

Currently, other types of digital medical imaging beyond radiological interpretation that are used in the absence of a live, interactive encounter do not convey enough information to be clinically adequate.

The Medicaid program will reimburse for specified services provided via telemedicine to the degree that it does so for face-to-face office visits and only to the degree to which the services provided are consistent with the licensure requirements of all participating providers.

Telemedicine has been used in the Medicaid program to increase access to medically underserved areas and populations in Texas, especially access to specialty care. To date, the Texas Medicaid program has only reimbursed hub site providers for consultation or interpretation rather than for direct patient services.

The 80th Legislature may consider ways to expand the use of telemedicine in providing access to healthcare services to Texans, particularly those in rural and underserved areas of the state.

Rising Medical Costs

National health expenditures continue to accelerate; overall health expenditures are projected to nearly double by 2011, with prescription drug costs accounting for about 20 to 30 percent of the overall increase in healthcare costs. Rising health care costs are not only a threat to the fiscal well-being of states, employers, health plans, and consumers, but also could reduce access to care for millions of Americans.

A number of other factors are contributing to the rising costs of healthcare. The aging population is an ongoing issue of concern—by 2008, about 15 percent of the U.S. population will be 65 years of age or older—because as people age their healthcare needs increase. According to the Center for Studying Health Care Change, a 64-year-old requires nearly \$4,500 more per year in health care services than an 18-year-old.

Poor lifestyle choices exacerbate health problems—seven out of 10 Americans do not exercise regularly and inactivity is one of the leading causes of many chronic diseases. Eating a poor diet that is high in sugar, fat, and processed food is also a contributing factor that has led to an obesity epidemic in Texas.

Medical technology is another factor. Developments in medical technology have revolutionized the health care industry, leading to early diagnoses of conditions and better outcomes, it is costly. According to research, medical technology advancements account for almost half the total increase in health care costs during the past 30 years.

When patients do not have health insurance or their health insurance does not pay for the care they need, the cost of that individual's care is shifted to those patients with health insurance or to other sources.

Public safety net hospitals and health systems provide inpatient and outpatient care for low-income individuals, community-wide services such as trauma care, burn units, and neonatal intensive care, and medical education. They also provide care for the uninsured and the underinsured and serve as initial responders to natural disasters.

New drugs often replace older, less expensive medications. Their development takes time and costs money, as does obtaining regulatory approval to market the drugs. Most research and testing costs are passed on to consumers.

Finally, more than 40 million Americans do not have health insurance and the growing number of uninsured has a significant impact on healthcare costs. Uninsured individuals often delay treatment until a condition worsens and becomes more expensive to treat. When they do seek treatment, it will likely be in the emergency room which is the most expensive place to obtain treatment. The burden of caring for the uninsured has fallen on safety net institutions that serve all patients regardless of ability to pay.

Despite the critical role of public safety net hospitals in preserving community health, the financial situation of such hospitals remains precarious. The combined effect of federal, state, and local budget cuts, rising health care costs, increasing numbers of uninsured, and the costs associated with homeland security and natural disaster preparedness is exacerbating the problem. Personnel shortages and the rising costs of pharmaceuticals and other medical/surgical supplies have also contributed to the problems facing safety net providers.

The share of unreimbursed costs covered by Medicare and Medicaid supplemental payments like disproportionate share hospital (DSH) payments has continued to decline while the volume of ambulatory care at public hospitals continues to increase. Reduced Medicaid and Medicare payments to hospitals have exacerbated the funding problems.

The 80th Legislature will continue to grapple with issues relating to reimbursement for safety net providers. Legislators may also have to address reimbursement issues related to providing outpatient primary and specialty care to the uninsured and underinsured.

Prompt Payment of Health Care Providers

Issues relating to prompt payment of health care providers stem from difficulties experienced by physicians and other health care providers in receiving timely and accurate payment for services. Disagreement over issues relating to payment of claims continue. Providers contend that insurers fail to pay claims in a timely or accurate manner, and insurers assert that they pay all *clean claims* promptly.

Legislation was passed by the Texas Legislature in 1995, 1997, 1999, 2001, and 2003 to address problems relating to managed care and to claims payment issues. The 79th Legislature enacted legislation to address the prompt payment issue, establishing clearly defined deadlines and time-frames for the filing and payment of claims, descriptions of fee schedules, disclosure of coding descriptions and reimbursement methods used by carriers, and continued monitoring of the claims process. Despite these reforms, provider complaints regarding prompt payment of claims remain.

The 80th Legislature may consider amendments to existing statute to address unresolved issues relating to the prompt payment of provider claims.

Healthcare Goes Retail

A new healthcare business trend is emerging in the form of healthcare clinics located in retail locations such as Wal-Mart, H-E-B, and CVS and Walgreens pharmacies, offer limited primary care services—referred to as convenient care clinics (CCCs). There are an estimated 200 CCCs throughout the United States today. These free-standing clinics, staffed by nurse practitioners or physicians and offering services that may be more affordable than a doctor's office, are becoming increasingly visible and popular with patients.

CCCs treat common medical conditions, such as strep throat, ear infections, urinary tract infections, and skin rashes, and provide preventive services, including screenings and blood tests, immunizations, and basic physical exams, in collaboration with local physicians. The retail clinics are open seven days a week, including extended hours during weekdays, and on most holidays. Patients do not need an appointment; patients are seen on a first-come, first-served basis.

The cost for services at CCCs vary by location, but treatment for a medical condition such as strep throat or ear infections costs \$45 to \$69, including the cost of any diagnostic tests that may be necessary. Preventive services, including medical tests, vaccinations, and physicals, have varying prices, starting at \$11 and going up to \$128. Retail clinics also accept some forms of health insurance.

Two of the largest players are MinuteClinic, based in the Minneapolis-St. Paul, Minnesota, area and RediClinic, a Houston-based company. RediClinics currently are located in Texas, Arkansas, Oklahoma, and New York, with others scheduled to open soon in Georgia and Virginia. MinuteClinics are located in Minnesota, Texas, Florida, Georgia, Tennessee, Washington, North Carolina, Missouri, Kansas, Arizona, Indiana, Ohio, Connecticut, Baltimore, and New Jersey.

The 80th Legislature may consider issues relating to the regulation and monitoring of services provided through CCCs.

Federally Qualified Health Centers (FQHCs)

There are approximately 93 million medically underserved people in the United States who are geographically, economically, and culturally challenged. Federally Qualified Health Centers (FQHCs) are nonprofit, consumer-directed corporations that provide care and treatment to these underserved and the uninsured populations. FQHCs receive grants under Section 330 of the Public Health Service Act and include community health centers (CHCs), migrant health centers, health care for the homeless programs, public housing primary care programs, and urban Indian and tribal health centers. FQHCs are supported by federal health center grants, Medicaid, Medicare, private insurance payments, and state and local contributions. An FQHC Look-Alike is an organization that meets all of the eligibility requirements of an organization that receives a Section 330 grant, but does not receive grant funding.

In addition to eligibility for Section 330 grants, FQHCs also are eligible for enhanced Medicare and Medicaid reimbursement, medical malpractice coverage through the Federal Tort Claims Act, purchasing of prescription and non-prescription medications for outpatients at reduced cost through the federal 340b drug pricing program, access to national health service corps, access to the Vaccine For Children program, and for various other federal grants and programs. Not all of these benefits are extended to FQHC look-alikes.

FQHCs provide affordable primary and preventive care services to the poor and underserved, regardless of the persons insurance status or ability to pay, serving some 3,500 communities nationwide and an estimated 15 million people.

FQHCs and CHCs have been successful at improving patient health while reducing costs. Studies have shown that money invested in these centers helps to reduce Medicaid expenditures and national health care spending. FQHCs can also be cost-effective in reducing hospitalizations and emergency room by improving access to regular preventive and diagnostic services. According to the National Conference of State Legislatures (NCSL), studies find that Medicaid beneficiaries served at health centers are 22 percent less likely to be hospitalized, resulting in a savings of \$1.6 billion to \$8 billion annually.

Health centers are now found in all 50 states and U.S. territories. State funding is provided in 37 states; however, budget problems in recent years have led to reductions in the level of dedicated financing for health centers. About a quarter of center funding comes from federal grants through the Consolidated Health Center Program and the Bush

administration started a five-year initiative to add an additional 1,200 health center sites by 2006.

Only California and New York have more FQHCs than Texas; Florida ranks immediately behind Texas. In 2005, Texas had 49 funded FQHCs and four FQHC-look-alikes.

Another ongoing challenge for FQHCs is fulfilling the Medicaid requirement relating to the stationing of eligibility workers at their sites. Medicaid law requires, as a condition of program participation, that states provide for receipt and processing of Medicaid applications for low-income pregnant women, infants, and children at non-governmental outreach locations, including FQHCs. Maintaining compliance with this federal statutory requirement continues to be an issue of concern in Texas.

The 80th Legislature may address ongoing issues related to funding, health care professional shortages, and expanding the number of FQHCs in Texas.

Statewide Smoking Ban

An article in the November 10, 2006, issue of the Centers for Disease Control and Prevention (CDC) journal, *Morbidity and Mortality Weekly Report (MMWR)*, states that of the 41 million Americans who received health insurance coverage from state Medicaid programs in 2004, an estimated 29 percent were current smokers.

A July 1, 2005, *MMWR* article states that an estimated \$92 billion (the average for 1997–2001) in productivity losses occurs annually from deaths due to smoking. The economic costs of smoking are more than \$167 billion, including an additional \$75.5 billion in smoking-related medical expenditures. The article states further that cigarette smoking caused an estimated 438,000 premature deaths annually from 1997 through 2001, and that smoking during pregnancy resulted in an estimated 523 male infant and 387 female infant deaths annually. Smoking, on average, reduces adult life expectancy by approximately 14 years.

Statewide bans to prohibit smoking in public places are intended to protect public health and welfare and to recognize the right of nonsmokers to breathe smoke-free air.

In 2005, the Montana Legislature approved a statewide ban on smoking in all public buildings, including the state's 1,700 bars. The ban will not apply to bars until October 1, 2009. In 2006, Ohio voters passed a statewide anti-smoking initiative.

Ohio is the 15th state to pass a strong smoke-free law which protects all workers, including those in bars and restaurants. The list includes California, Colorado,

Connecticut, Delaware, Hawaii, Maine, Massachusetts, New Jersey, New York, Rhode Island, Montana, Utah, Vermont, and Washington. Several countries also have implemented smoke-free laws, including Italy, Ireland, England (effective 2007), Scotland, Uruguay, Norway, New Zealand, Sweden, and Bermuda.

On June 27, 2006, the U.S. Surgeon General's Office released a report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*, on the serious health hazards of breathing the toxic chemicals in secondhand smoke and confirmed that smoking should be eliminated in indoor spaces to protect nonsmokers.

The 80th Legislature may consider a statewide ban on smoking in public places.

Automatic External Defibrillators in Schools

During the past several years, a number of incidents of student death or injury have raised the profile of the debate on whether all public schools should have automated external defibrillators (AEDs). An estimated 7,000 children and an estimated one out of every 200,000 high school athletes die from sudden cardiac arrest each year. Sudden cardiac arrest strikes people of all ages and fitness levels, usually without warning. An AED can potentially save the life of a student, employee, or visitor in such emergency situations.

AEDs, ranging in cost from \$1,500 to \$3,000, are simple to use. After adhesive electrode pads are put on a victim's chest, the AED's computer determines the heart rhythm and, if a shock is needed, delivers one through the chest wall to the heart. Audible or visual prompts guide users.

Medical experts believe that many children could be saved if an AED is used within minutes of a collapse. Although at least 11 states have considered or enacted legislation regarding the use of and access to AEDs in schools, only an estimated 20 percent of all public and private schools have AEDs.

In May 2002 legislation was enacted in New York to require school districts, county vocational education and extension boards, and charter schools to provide and maintain on-site, in each instructional school facility, at least one functional AED for use during emergencies. The legislation also requires public school officials and administrators responsible for such school facilities to ensure the presence of at least one staff person who is trained in the operation and use of an AED.

Pennsylvania enacted a voluntary statewide AED law in 2001 that provided two free AEDs to every public school district and vocational technical school in the

Commonwealth. All schools (including private, public, parochial, and charter) were permitted to purchase an unlimited number of AEDs at a reduced cost. Schools were required to assure that two or more persons at the school are trained in its use and meet other specified requirements regarding storage and use. Good Samaritan civil immunity was authorized for school employees who use the AED in emergency situations.

Delaware enacted a law in 2000 under which Delaware's legislature provided AEDs to the state's public schools through tobacco settlement funds. Schools are not mandated to place AEDs. The State Department of Emergency Medical Services conducted a survey of each school to determine how many AEDs are required to protect the school facility. The number of athletic events that are held at the school and the number of spectators who attend such events were factors in the survey process. A facility receiving an AED is required to have staff who are trained through a nationally recognized provider approved by the Delaware EMS Director. Immunity from civil liability is granted to anyone who renders emergency care using an AED as long as he/she does so in a prudent manner and without compensation. Immunity is also granted to the owner of the site where the AED is located, the person authorizing the purchase of the AED, and the entity providing CPR/AED training.

In 2003, Illinois' legislature enacted a law requiring all schools to have AEDs; however no funds were provided and schools were directed to seek alternative and innovative funding sources to meet the state mandate.

In 2005, several states enacted or attempted to enact AED-related legislation. In Virginia a bill addressing AEDs in schools was considered by the General Assembly, but was tabled due to lack of funding. Florida now requires placement of AEDs in many of the state's schools—all members of the Florida High School Athletic Association, which includes more than 500 high schools and some middle schools, must have a defibrillator. In 2006, Maryland established a requirement that every high school and school-sponsored athletic events have an AED available.

The 80th Legislature may consider legislation to require the placement of AEDs in Texas public schools and funding for the purchase of the AEDs.

Regulating Pharmacy Benefit Managers

Most health plan sponsors provide a prescription benefit as part of overall health insurance coverage. As the size and complexity of pharmacy benefits increase, many health plans have contracted with companies known as pharmacy benefit managers (PBMs) to administer the pharmacy benefit process for them. PBMs are third-party administrators of prescription drug benefits who handle such administrative tasks as

paying providers, processing claims, answering questions posed by providers and health plan participants, and negotiating with drug companies. Some PBMs also operate mail-order pharmacies.

While there are more than 100 PBMs, three PBMs control over half of the prescription drug transactions in the United States: Medco Health, Express Scripts, and Caremark. PBMs now manage an estimated 75 percent of all private-pay prescription claims. Despite the use of PBMs, consumer and provider complaints continue to be of concern. Prescription drug benefit costs to health plans are doubling every five years, yet the major PBMs continue to experience robust profits.

The growth of PBMs also has had a profound effect on retail pharmacy and local retail pharmacists complain that PBMs have used their market dominance to lower provider reimbursements.

While PBMs continue to function as fiduciaries and claims processors, they have expanded the array of services to include clinical services, such as drug utilization review; formulary and rebate management; and mail order pharmacy.

Clinical services such as utilization review involve controls on adverse drug reactions, fraud and abuse controls, and limits on the amount of drug that can be dispensed at one time. Opponents of PBMs claim that such services encroach on the practice of pharmacy and that such services should be regulated by state oversight bodies. Proponents suggest that such measures produce costs savings and additional oversight to ensure proper use of drugs.

Using a formulary to determine drugs covered under a benefit plan allows PBMs to negotiate with drug manufacturers to include or exclude their products from such a list. Many manufacturers pay rebates to the PBM to ensure that their products are included in the formulary. PBMs typically share some – but not all – of such rebates with plan sponsors, who may or may not be fully aware of the full incentive amounts.

The operation of mail-order pharmacies by PBMs has allowed PBMs to become both plan managers and providers. Proponents suggest that this allows PBMs to better control utilization and regulate costs. Critics suggest that this enables PBMs to skew benefit designs and pricing in ways that maximize the PBMs' profits at the expense of retail pharmacists. Critics also suggest that such arrangements can place consumers at risk if proper controls and oversight are not in place to ensure that quality and appropriate medications are being provided. Mail-order pharmacies are regulated by almost all states, but the level of oversight varies widely among the states.

PBM business practices increasingly are being scrutinized for engaging in practices that, while legal, may serve to increase PBM profits at the expense of health plan sponsors,

consumers, and providers. Among the practices being reviewed are paying pharmacy providers at a lower price than the PBM charges health plans; selling claims data on prescribing and dispensing history to drug companies; rebate arrangements that PBMs do not share with plan sponsors; formulary and rebate arrangements that are skewed by the PBM to favor certain drugs that are more profitable; gaining a federal drug repacker license, enabling the PBM to buy bulk packages from manufacturers at a discount, repackage the drugs, then sell them through the mail-order pharmacy at an increased profit; and utilizing “spread pricing” between what a PBM pays a participating pharmacy network to fill short-term prescriptions and what the PBM bills an employer, creating potential conflicts of interest.

PBMs have been the subject of numerous class-action and whistle-blower lawsuits in Texas and other states, as well by the U.S. Department of Justice. Many states are seeking to enact laws and regulations to require PBMs to become more transparent in their business practices.

The 80th Legislature may consider methods to regulate the practices of PBMs to encourage transparency and to help ensure that Texas consumers are receiving appropriate and cost-effective pharmacy services.

Immigrant Policy

Major changes to the immigration system at the federal level continue to impact the way states, particularly border states like Texas, respond to the issue. The questions regarding access to basic safety-net services and work supports are particularly difficult to resolve. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, introduced new restrictions on immigrant eligibility for federally-funded services. Undocumented immigrants who secured status under the Immigration Reform and Control Act of 1986 (IRCA) generally were barred from major federal public assistance programs for five years after legalizing. Over half of all states chose to cover at the state's expense one or more of the essential services no longer funded by the federal government. States have been unable to fill in some gaps created by this cost shift.

Advocates for proposals to offer immigrants who are living and working in the United States an opportunity to legalize their status suggest that undocumented immigrants are hard-working, pay taxes, and should have access to tax-supported services. Opponents of legalization suggest that the potential costs of offering an opportunity to achieve permanent status, particularly in terms of public benefits expenditures, are insupportable.

While Congress continues to wrestle with immigration reform issues, state legislatures are also considering measures relating to immigrants. According to the National

Conference of State Legislatures, in 2006, state legislatures considered 570 pieces of legislation concerning immigrants that focused on education, employment, identification and driver's licenses, law enforcement, legal services, public benefits, trafficking, and voting procedures. At least 83 of those bills and resolutions were enacted, although a few bills were subsequently vetoed. Bills were enacted in 32 states: Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming.

The 80th Legislature will likely address issues relating to access to public health and human services benefits by illegal immigrants.

Health Professions Shortages

The shortage of health professionals, especially nurses, continues to be a significant concern in Texas, particularly in rural and underserved areas. A Texas Statewide Health Coordinating Council symposium on priority health care workforce issues, including nursing shortages, in March 2004, addressed possible changes in health care delivery methods to "address a predicted burgeoning need for primary care and chronic disease treatment" to be included in the *2005-2010 Texas State Health Plan*.

A report issued in July 2005, *Increasing RN Graduates: Admission, Progression and Graduation in Texas Schools of Nursing – 2004*, prepared by the Nursing Workforce Data Section, Center for Health Statistics, Texas Department of State Health Services, and the Statewide Health Coordinating Council Nursing Workforce Data Advisory Committee states that the United States is experiencing an unprecedented shortage of registered nurses, describing the situation as a "perfect storm."

The report suggests that a number of dynamic forces are converging to create this "perfect storm," including an increased demand for nurses coupled with a decreased supply of nurses and unfavorable work conditions. These factors when combined with the aging of the population, the increasing population of uninsured and underinsured, and the increasing population of persons who are critically and chronically ill requiring higher levels of care create the state's "perfect storm." The report also notes that the aging of the nursing workforce and the smaller numbers of persons entering the nursing field will also exacerbate the nursing shortage on a long-term basis.

Although schools of nursing in Texas have increased student capacity and graduated more students—graduation trends from 1998 to 2004 show a 63.6 percent increase in graduates of bachelor of science-level nursing programs and a 15.3 percent increase in

graduates of associate level programs—significant numbers of qualified applicants (34 percent of total applicants) are still being denied admission.

The lack of capacity in nursing schools is attributed to factors such as the shortfall of nursing professors, an aging cohort of faculty, non-competitive faculty salaries, and insufficient funds to hire additional faculty.

The state continues to experience a decline in pharmacists and physicians in non-metropolitan areas, and the numbers of pediatricians per 100,000 children, internal medicine physicians, dentists and registered nurses remain well below the rates for the United States as a whole. The ratio of psychiatric physicians in Texas has also remained flat.

Texas legislators, during the 80th Legislature, may consider issues relating to the continuing nursing shortage, including making adjustments in the funding formula to allow for an increase in nurse faculty salaries in nursing programs in order to be more competitive with nurse practice salaries and expanding the supply of qualified nurse educators, particularly minority, non-traditional, and younger nurse educators, to enable nursing schools to expand nursing programs and admit more students.

The 80th Legislature also may address issues relating to the under representation of minority populations in the health care professions and the limited availability of health care workers in certain geographic locations in non-metropolitan areas and border counties.

Finally, the 80th Legislature may address the health professions shortage issue by addressing issues related to funding streams for graduate medical education; reviewing the role of the state's teaching hospitals in the provision of indigent care and in addressing health care needs of underserved regions of the state; addressing border and rural health care needs; expanding consumer-directed care models; reexamining current and alternative methods of funding regional universities, community colleges, health science centers and their reimbursement for the provision of indigent health care; and consolidating certain licensing agencies or their administrative functions.

Access to Care

Texas has the highest rate of uninsured persons in any state in the United States; nearly one in four Texans are uninsured. That is 10 percent higher than the national average of 15 percent. Twenty-two percent of Texas children are uninsured compared to the national average of 12 percent. The high rates of uninsured have been attributed to the large number of small businesses, which typically do not offer insurance benefits to

employees, and the state's higher numbers of new immigrants. The combination of increasing need and decreasing resources in providing health care access for indigent and underinsured populations is straining budgets at all levels of government.

As traditional funding sources dwindle, local communities are seeking new ways to serve their communities. Some have sought designation for federally qualified health centers and community health centers that use federal grant dollars to fund care for uninsured patients. In Texas, 59 percent of community health center clients are uninsured and another 25 percent receive Medicaid or are covered by the Children's Health Insurance Program (CHIP).

Some suggest that the high numbers of uninsured in Texas are having a negative impact on the state's productivity and economic power. The uninsured and underinsured population also contributes to emergency room and trauma center costs, creating a financial burden that sometimes causes these facilities to close or suffer a reduction in quality and accessibility to health care for all Texans.

Although Article 9, Section 14, of the Texas Constitution authorizes counties to care for their indigent residents, the counties are not required to do so under this constitutional provision. In 1985, however, through the Indigent Health Care and Treatment Act (Chapter 61, Health and Safety Code), the legislature mandated that Texas counties offer basic health care services to indigent residents.

While Medicaid, Medicare, or CHIP are the primary sources of health care coverage for the elderly and low-income families, people who have no health insurance and are ineligible for those state or federal programs usually obtain health care through charity care clinics, local indigent-care programs, and hospital emergency departments.

Although hospitals are not required to offer unreimbursed preventive care services, the federal Emergency Medical Treatment and Active Labor Act of 1986 (EMTALA) requires hospitals to assess and stabilize any patient, regardless of the patient's ability to pay, before moving that patient to another facility for treatment.

Under Section 61.028, Health and Safety Code, a county is required to provide the following basic health care services: primary and preventative services including immunizations, medical screenings, and annual physical examinations; inpatient and outpatient hospital services; rural health clinics; laboratory and X-ray services; family planning services; physician services; three prescriptions a month; and skilled nursing facility services, regardless of the patient's age. Counties are authorized but not required to provide additional health care services.

Under Section 61.035, Health and Safety Code, the maximum county liability for each fiscal year for health care services provided, including hospitalization and a skilled

nursing, to each eligible county resident is up to \$30,000 or the payment of 30 days of hospitalization or treatment in a skilled nursing facility, or both. The county indigent health care fund, administered by the Department of State Health Services, may be used to reimburse counties for a portion of their indigent-care costs after the county qualifies for such by spending at least eight percent of the county's general tax levy for that year on basic health services. After meeting the eight percent threshold, a county becomes eligible for reimbursement of 90 percent of the actual payments for health services for the remainder of the fiscal year. If the county does not receive reimbursement from the state, the county is not liable for payments after it has reached the eight percent threshold.

Hospitals often treat patients who reside outside their service areas for whom they subsequently receive partial or no reimbursement. Out-of-area care also occurs at regional medical centers that offer an array of specialized services, such as trauma care.

The 76th Legislature established the Tertiary Medical Care program, using unclaimed lottery funds to reimburse hospitals for tertiary, stabilization, and extraordinary emergency services to patients from outside the hospital's service area. State-designated trauma centers and teaching hospitals are eligible to participate in the program. The 78th Legislature did not appropriate any funds for tertiary care and H.B. 2292, 78th Legislature, Regular Session, eliminated the requirement that a portion of unclaimed lottery funds be used to reimburse counties for uncompensated care. The 78th Legislature established the Trauma Facility and Medical Services Account (TFMSA) to reimburse state-designated trauma facilities for uncompensated trauma care using a portion of state traffic fines collected and a surcharge on habitual driving offenders.

Fifteen percent of the TFMSA is to be distributed equally among qualifying trauma care facilities; the remaining 85 percent is to be distributed proportionately based on the amount of uncompensated trauma care provided by each facility. The 78th Legislature also reallocated a portion of unclaimed lottery funds to teaching hospitals through a rider in the General Appropriations Act. Rider 53, Article II, General Appropriations Act, limits distribution of indigent-care funds to a single county to no more than 35 percent of the total funds appropriated.

Texas established a permanent fund as part of the tobacco settlement agreement to offset unreimbursed health care provided by local governments. Disbursement from the fund is based on the amount local governments spend on county indigent-care services, unreimbursed correctional facility care, health care services beyond the required basic services, and other facility-related costs.

Counties also may recoup indigent care costs from Medicaid and supplemental security insurance (SSI) if the patient becomes eligible for these programs. Medicaid will reimburse for medical expenses retroactively to the time of application after an individual is approved for SSI.

Counties and hospital districts indigent care obligations may increase due to changes in the Medicaid program. Health care inflation, a growing uninsured population, and an aging population may also increase the burden of counties, particularly in smaller and rural counties with declining populations and limited facilities.

The 80th Legislature may consider various ways to address funding for indigent health care. Suggestions to address these problems include a controversial "provider tax" on physicians and hospitals which would then be sent to the federal government, leveraged and returned to the local level as grant dollars to a three-share program through which the government, businesses, and individuals all pay a portion of the health care costs. Other options include expanding the number of FQHCs, requiring physicians to provide some level of service to poor or underserved communities if they are educated with taxpayer money, and establishing a system of regional medical centers with outlying health care facilities.

Mental Health and Substance Abuse Crisis Services

Texans experiencing a mental health or substance abuse crisis lack basic services that would help them avoid longer, more costly involvement with the state mental health system or the criminal justice system.

A Texas Mental Health and Substance Abuse Crisis Services Redesign workgroup was appointed by former Commissioner of Health Eduardo Sanchez in December 2005 to assess crisis services, make recommendations for improvements to crisis services, and result in statewide coverage for all Texans who need immediate assistance in a mental health or substance abuse crisis.

An evaluation by the workgroup of the existing crisis intervention and prevention system in Texas concluded that the "current crisis services delivery system in Texas varies widely in how well it performs in all of these areas, sometimes resulting in negative outcomes for individuals, families and communities." The final report of the workgroup concludes that,

"In Texas crisis services are not accessed, provided, or available in a uniform, consistent manner. How services are accessed, the type of intervention, and the quality of care a consumer receives are highly variable from one county to the next. While each local mental health authority in Texas is required to ensure 24-hour availability of crisis mental health services, in many communities, the limited array of interventions available and access to those services are inadequate and lack necessary resources. Although there are standards governing

timeframes for response and credentials of responders, the current crisis standards do not provide for a uniform, clinically effective crisis system. Crisis services are required to be available statewide, but survey results and testimony from the public hearings indicate that this is not always the case. Reasons for lack of availability include difficulty locating and accessing services, geographical barriers, lack of resources, and the absence of a clinical design for the delivery of crisis services. In many communities, the picture is further complicated by the lack of collaboration and sharing of resources to address the problem. Lack of available crisis services in these communities has resulted in resource and regulatory burdens for law enforcement, the courts, jails, hospital emergency rooms, and schools and has reduced the quality of life for citizens in those communities."

The workgroup recommended:

- DSHS revision of the Mental Health Community Services Standards to strengthen timeframe requirements for emergency care services, requirements for crisis provider training and competency, and oversight of crisis resolution services and staff.
- Establish oversight mechanisms to monitor provider emergency care response times, monitor provider training and competency and outcomes of crisis service interventions. Identify best practices and develop technical assistance for communities to address the community's need for mental health and substance abuse training, coordination and communication among mental health crisis stakeholders (individuals, and families, law enforcement, hospitals, and judiciary).
- Standardize screening and crisis assessments.
- Provide clear guidelines for response and evaluation of individuals in crisis under the influence of alcohol and/or drugs and integrate and expand community resources for these individuals.
- Develop and implement guidelines for the use of "no harm" contracts.
- Define parameters when medical clearance is and is not required.
- Improve use of community resources, e.g., law enforcement detained for several hours waiting in the hospital emergency room or transporting individuals long distances for assessment or hospitalization.

The redesign workgroup also recommended that the service array provided throughout the state include crisis hotline services; psychiatric emergency services with extended observation services (23 to 48 hours); crisis outpatient services; community crisis

residential services; mobile outreach services; and crisis intervention team/mental health deputy/peace officer programs.

The workgroup also expressed concern over the lack of medical transportation in all areas of the state, and concluded that "lack of readily available, medically appropriate transportation contributes to poor consumer outcomes, stigma, and inefficient use of limited public funds." Making adequate resources available to address transportation issues is considered a critical component of the mental health and substance abuse crisis services reform effort in Texas.

Improving and expanding delivery systems, including telemedicine, will help to compensate for difficulty recruiting and accessing trained health care professionals and increasing access to comprehensive mental health services for rural Texans who often do not have easy, timely access to such services.

Finding ways to increase collaborative efforts among local mental health authorities, hospitals, courts, police, sheriffs, families, and consumers to build the local crisis system is viewed as the centerpiece in the transformation of mental health crisis services statewide.

The 80th Legislature may consider measures to improve state and local crisis services, and ensure statewide coverage for all Texans who need immediate assistance in a mental health or substance abuse crisis.



INSURANCE

Windstorm Insurance Coverage

The 62nd Legislature established the Texas Windstorm Insurance Association (TWIA) in 1971 because of the lack of property insurance, particularly windstorm and hail coverage, on the Texas Gulf Coast following Hurricane Celia. The 72nd Legislature changed the TWIA funding mechanism in 1991. Over the last 15 years, the exposures at TWIA have multiplied five times, with over \$29 billion in exposure as of May, 2006. While the number of structures or their contents insured by TWIA is growing dramatically, some private companies are refusing to write coverage in coastal counties for windstorm damage.

The 80th Legislature may consider legislation to include an annual rate increase of less than five percent without approval by the insurance commissioner and greater than five percent with approval by the insurance commissioner; updated actuarially sound rating methodology, including models; a surcharge for seasonal/rental properties; an appeal provision for unapproved rate requests; and a special surcharge to increase the Catastrophe Reserve Trust Fund.

The 80th Legislature may also consider legislation mandating that all buildings, remodeling, and repairs throughout the coastal area be certified according to TWIA building codes.

Based on recommendations from the Joint Select Committee on Windstorm Coverage and Budgetary Impact, the 80th Legislature may consider the creation of the Texas Windstorm Reinsurance Facility and Trust Fund.



INTERGOVERNMENTAL RELATIONS

Texas Uniform Planned Community Act (TUPCA)

The Texas Uniform Planned Community Act (TUPCA) is a legislative initiative designed by the Texas College of Real Estate Attorneys (TCREA) to craft a uniform statewide law that provides requirements for the creation and operation of mandatory homeowners associations.

Concerns have been raised regarding transfer fees on the sale of new and used homes. Home developers have been charging transfer fees on new homes when they are selling a used lot. According to TCREA, TUPCA was designed not to limit the size of a transfer fee, but to make the buyer aware that fees were being assessed upon the purchase of a home. TUPCA provides limitations on third-party fees or "transfer fees," but only specifies that the fee or expense is to be a reasonable amount. Some believe that large transfer fees may act as a disincentive to potential home buyers.

The 80th Legislature may examine issues concerning transfer fees and consider placing a limit on such fees.

Public testimony was heard by the Senate Committee on Intergovernmental Relations relating to homeowners associations' authority to foreclose on homeowners who are delinquent paying association fees. Some homeowners associations have been able to foreclose on properties due to delinquent payment of association fees and then purchase those homes at a foreclosed or discounted price. The Texas Homeowners for Homeowners Association Reform, Inc., opposes this practice because it gives unlimited powers to homeowners association boards.

The 80th Legislature may examine homeowners associations' authority regarding association fees and the ability to foreclose for non-payment or late payment of such fees.

Concern has also been expressed that any legislation creating powers and duties under TUPCA should not include a provision that allows the right-of-first-refusal of homeowners associations over potential buyers. While not a common practice now, this has been used by homeowners associations in the past to restrict home purchasing by potential buyers. TAR states that such a provision could be discriminatory.

The 80th Legislature, in considering TUPCA, may consider language relating to nondiscrimination provisions.

County Authority

Most Texas counties have limited powers and are able to provide only basic services. Subchapter E, Chapter 232 (County Regulation of Subdivision), Local Government Code, generally restricts the authority of counties to regulate growth or development, however, it provides growth and development regulation authority to counties with large populations or located adjacent to large metropolitan areas. Subchapter E does not allow many counties that do not qualify, due to population requirements, to provide certain utility services and this limits their ability to provide adequate development planning.

Texas is a rapidly growing state. Counties that were rural in the past are now urban. Since growth may occur rapidly, many communities are without necessary services to support the expansion due to the restrictions established by Subchapter E. Disallowing some counties to develop infrastructure to support growth with water and waste water services significantly restricts the ability of those counties to plan for future subdivision expansion. The 80th Legislature may consider legislation that grants all counties permissive regulatory authority in rural areas to effectively manage growth and development.

Section 412.012 (Contract for Water Supply and Sewer System in Populous Counties), Local Government Code, authorizes certain large counties to provide water services to residents outside a municipality. This statute does not authorize rural counties to provide water services. State and local health officials and residents are concerned with the health and safety of residents who are not provided with basic water and wastewater services. Without legislative action to allow counties to provide such services, health and safety concerns may increase.

The 80th Legislature may consider extending the rights of rural counties to provide water services so that the counties can prevent public health issues resulting from improper water service.

Some cities have elected to create special districts within their extraterritorial jurisdictions (ETJ) to provide residential services such as water and sewage. However, there has been considerable discussion regarding whether this is the most effective way to address this issue. The 80th Legislature may examine the use of special districts to provide residential services to areas within a city's ETJ.

Homeownership Rates for Low-Income Texans

According to the Texas Low-Income Housing Information Service (TLIHIS), Texas ranks 44th among all states in the percentage of residents who own their homes. Many

Texas residents fall below the poverty line, contributing to the low homeownership rates. According to the United States Census Bureau, the Texas poverty rate is 15.8 percent, approximately three percent higher than the national average. TLIHIS reported that minority groups such as African-American and Hispanic make up the majority of people who do not own homes. The increasing immigrant population also places an additional stress on the already high demand for quality housing. Neighborhood associations currently may bar low-income housing projects from developing in desirable areas, leaving fewer areas available for low-income housing. In addition, as older urban neighborhoods are redeveloped, the low-income housing in the area is being replaced by more expensive housing, driving out economically disadvantaged groups.

The 80th Legislature may address the issue of more funding for homeowner assistance programs to increase homeownership rates.

The 80th Legislature may also consider creating a down payment assistance program to assist homebuyers with the initial capital to purchase a home, or authorizing a tax credit for first time homebuyers to provide an additional incentive to homebuyers.

Flood Map Modernization

The Federal Emergency Management Agency (FEMA) has developed the Flood Map Modernization Mid-Course Adjustment (flood map program) which is a federal government multi-year program that updates the nation's flood hazard identification maps. According to FEMA, the flood maps have been used for over 35 years under the National Flood Insurance Program to identify flood hazard areas and to assist in setting flood rates for insurance purposes. The flood maps have been used for local planning and to provide assistance in emergency preparedness and response.

A federal matching funds process, including income from taxes on floodplain insurance policies, currently funds the flood map program. However, most of the insurance policy tax income goes directly into the state general fund, with a small percentage used to fund the state's flood map support activities. Concerns have been raised that Texas needs to provide additional funding and support to the map modernization process.

Concerns have arisen regarding older flood maps containing inaccurate data being updated, but still containing errors from the older flood map. The 80th Legislature may review the flood mapping process to ensure that all Texas maps are accurate.

The 80th Legislature may examine the need for a state program that provides additional technical assistance for local floodplain administrators related to FEMA programs and flood mapping.

The 80th Legislature may also examine the flood mapping process and expand the process to rural areas that currently lack flood plain maps.

Red Light Cameras

A red light camera system provides three photographs of a vehicle that runs a red light — one photograph of the front of the vehicle once it enters in the intersection; one photograph of the rear of the vehicle exiting the intersection; and one of the vehicle's license plate. The camera system also superimposes data on the photograph, including the time and date of the infraction, the location of the intersection, the speed of the vehicle, and the elapsed time since the light turned red. A few systems provide the mentioned photographs and data to include a 12-second video of the infraction. A vendor reviews the photographs and discards any non-viewable photographs.

Subsequent to the enactment of S.B. 1184, 78th Legislature, Regular Session, Attorney General Opinion GA-0440 stated that municipalities have the authority to implement a red light camera civil citation system. However, municipalities may only implement the red light camera systems on state roads. The City of Garland was the first Texas city to implement such cameras in 2003.

Currently, the state does not receive any revenue from red light civil citations issued on state roads. The 80th Legislature may examine the distribution of revenue received from red light camera citations and address measures that would allow revenue sharing between municipalities and state government.



INTERNATIONAL RELATIONS AND TRADE

Colonias

Colonias are residential subdivisions which lack or have substandard water, wastewater, electricity, paved roads, or safe and sanitary housing. Historically, the development of these substandard, unincorporated residential subdivisions has been in the Texas-Mexico border region, but colonias have emerged in other areas of the state, mainly in Harris County. According to the secretary of state, approximately 400,000 people currently live in the 2,300 colonias that exist in Texas.

Over the past 15 years, the Texas legislature has attempted to address colonia issues and augment local funds to provide for missing or substandard services. Programs such as the Border Colonias Access Project, which authorizes up to \$175 million in general obligation bonds for roads to access colonias, the Economically Distressed Areas Program, through which the Texas Water Development Board provides funds to counties for water and wastewater services, and the Texas Community Development Block Grant Colonia Fund, which provides funds to improve the living conditions of persons residing in colonias, are among the programs developed to address the quality of life issues in Texas colonias.

The 80th Legislature may consider issues relating to establishing stable funding sources for initiatives to expand existing programs to prevent further development of colonias, and provide needed services and utilities to current colonias residents.



JURISPRUDENCE

Collaborative Law Procedure

A collaborative law procedure (CLP) is a form of alternative dispute resolution under which the parties and their counsel agree in writing to make their best good faith efforts to resolve the dispute on an agreed basis without resorting to judicial intervention. The Texas Family Code authorizes the parties in family law proceedings for divorce or affecting a parent-child relationship to use CLP. If CLP results in a settlement, a court must then approve and effectuate the agreement. If the parties cannot reach a settlement agreement, they must engage new counsel for any legal proceedings.

Some persons support legislation expanding CLP to many other areas of civil law, such as probate and contract disputes. Such litigation should grant CLP the protection of confidentiality, give the parties the ability to stay court dockets, and provide uniformity and guidelines across state. Opponents to such expansion assert CLP is not suitable for most civil litigation, where one issue is which party was at fault, which is not an issue in divorce cases. One problem with expanding CLP, opponents claim, is that if an attorney first represented a client in CLP, that attorney would be barred from representing the client if the dispute moved on to litigation. They also are concerned that although CLP may begin as a voluntary procedure, the courts may require CLP before any litigation may proceed, making it in effect mandatory and dragging out the litigation process. Opponents also argue that parties can already agree to engage in CLP without a statute and there is no compelling need for CLP outside of family law.

The 80th Legislature may consider expanding the use of collaborative law procedures.

Electronic Recording

One issue may be the use and cost benefits of electronic recording as an alternative method of preserving records of official court proceedings. Technological advances in record-making technology now permit a court reporter to use computer aided transcription software to accurately transcribe the spoken word into digital text almost immediately. As the court reporter creates digital text, he or she also makes a digital audio recording. The digital text can also be linked to video testimony. However, some want to give courts the ability to make more use of electronic audio systems in lieu of court reporters. Audio technology uses microphones and video cameras to make a record of proceedings. Persons with access to the system can listen to and watch hearings from remote locations and users can play back hearings, search recordings, and duplicate recordings.

Proponents argue that electronic recording is more efficient and more accurate than the use of court reports, and saves money. They also note that some courts have had problems retaining qualified court reporters. Supporters of this technology urge the legislature to grant state courts the latitude to choose between using court reporters and electronic recording, arguing that the best technology will win. Opponents argue that electronic audio systems have failed at great cost to taxpayers and produced mediocre results. They note that court reporters have to be certified and meet certain standards, but there are currently no standards for audio systems. Others recommend a hybrid approach which uses both electronic recording and court reporters as applicable and appropriate.

The 80th Legislature may authorize the use of electronic recordings to preserve official court proceedings.

Statutory County Courts at Law

Statutory county courts are created by the legislature. Because they are often created by the legislature in response to local concerns, jurisdiction can vary greatly from court to court. This patchwork method of creating such courts has also resulted in wide disparities in the compensation of statutory county court at law judges throughout the state. A resolution by the Texas Judicial Council recommends legislation providing for the implementation of uniform jurisdictional language for all newly-created statutory county courts, but allowing the current statutory county courts to retain their jurisdiction. The resolution also urges the legislature to enact legislation creating compensation parity for all statutory county court judges.

The 80th Legislature may consider implementing uniform jurisdictional language for new statutory county courts.

The 80th Legislature may equalize compensation for statutory county court judges.

Statutory Probate Courts

There are 17 statutory probate courts exercising exclusive jurisdiction over their counties' probate and guardianship matters. There are concerns regarding the power of the statutory probate judges to appoint guardians and approve additional fees charged by these appointees. Some parties have alleged that a few of these judges are using their position to enrich supporters by appointing them as guardians and then approving the payment of excessive additional fees. Others assert that the Probate Code already provides adequate oversight regarding the appointment and compensation of guardians and administrators.

The Probate Code sets out the compensation for a guardian. However, the probate judge may authorize additional compensation if the court finds that this statutory compensation is unreasonably low. In addition, the estate is liable for attorney and other professional fees. A problem occurs when a lawyer performs the administrative duties of guardian, but seeks extra compensation at his or her regular hourly rate as an attorney. Some parties have recommended amending the Probate Code to clarify that legal fees may be paid only for actual legal services and capping the amount of additional compensation that a court may approve. Regarding appointments, suggestions include requiring the appointment of professional guardians if no family member is willing or able to serve as a guardian and requiring the probate courts to allow all qualified persons to place their names on a list of potential appointees.

Another issue is when a party seeks to have a probate judge recuse himself or herself, and the judge refuses, the recusal hearing is before another probate judge. Because there are only 17 such judges in Texas, some assert that this gives the appearance of impropriety. One recommendation is that when a probate judge declines to recuse himself or herself, the presiding judge of the administrative judicial district assign a judge outside of the probate system, such as a district court judge, to hear the recusal.

The 80th Legislature may consider legislation addressing statutory probate courts.



NATURAL RESOURCES

Air

Many areas in Texas are facing the challenge of improving their air quality and some parts of the state are coming under increasing regulation because of increased air pollution. These areas are called nonattainment areas. Areas that are close to coming under increased regulation are called near nonattainment areas.

Texas meets federal air quality standards with the following exceptions: (1) carbon monoxide and particulate matter in El Paso; and (2) eight-hour ground-level ozone in Houston-Galveston-Brazoria, Dallas-Fort Worth, San Antonio, and Beaumont-Port Arthur. Maintenance areas are areas that were once designated in nonattainment of federal standards, but which have since been redesignated in attainment of those standards.

Texas also has three Early Action Compact (EAC) areas: Austin, San Antonio, and Northeast Texas. These are areas that have submitted EAC plans which on November 17, 2004, were utilized to develop state implementation plan (SIP) strategies to reduce emission standards to meet the eight-hour ozone standard by 2007.

Air pollutants in Texas that are of greatest concern are nitrogen oxides (NO_x), volatile organic compounds (VOCs), and ground-level ozone (formed when NO_x and VOCs react on hot, sunny days).

NO_x is usually a by-product of high-temperature combustion. Common sources are cars and power plants. VOCs include organic chemicals that vaporize easily, such as gasoline. Ground-level ozone, air also contains particulate matter—tiny bits of dust, ash, and other materials.

The 80th Legislature may monitor and continue efforts to comply with the federal air quality standards established by the Federal Clean Air Act (FCAA).

The Texas Emissions Reduction Plan (TERP) is a comprehensive set of incentive programs aimed at improving air quality in Texas. The Texas Commission on Environmental Quality (TCEQ) administers TERP grants and other TERP financial incentives. The legislature established TERP in 2001 and it was scheduled to expire in 2007. The 79th Legislature extended TERP until 2010 by extending certain fees and by providing that certain fees go to the Texas Department of Transportation (TxDOT) and that TxDOT pay the TERP fund a corresponding amount.

The 80th Legislature may continue to evaluate the effectiveness of TERP incentives and how the Texas Commission on Environmental Quality (TCEQ) administers TERP grants.

The 79th Legislature passed legislation intended to improve the operation and efficiency of the Low-Income Vehicle Repair [Retrofit, and Accelerated Retirement] Program (LIRAP) which offers financial assistance to low-income vehicle owners whose vehicles fail the emissions inspection test.

The 80th Legislature may continue to evaluate the effectiveness and efficiency of LIRAP.

Renewable Energy Development

Ethanol is an alcohol-based alternative fuel produced by fermenting and distilling starch crops that have been converted into simple sugars. Typical feedstocks include corn, milo, sugar cane, and sugar beets. Ethanol can also be produced from "cellulosic biomass" such as trees and grasses. Ethanol is most commonly used as a gasoline additive to increase octane and improve combustion. There are 112 plants operating and 48 plants under construction nationwide. There are two plants under construction in Texas. Texas currently has 14 public retail locations and five private federal refueling locations.

The 80th Legislature may consider legislation to facilitate and encourage development of the ethanol industry in Texas by such means as reimbursing city and county governments for infrastructure improvements; providing grants for utility connections; fully funding the federal ethanol tax credit; converting state automobile fleets to flex fuel vehicles; and creating an incentive for Texas farmers to grow crops that can be used as feedstocks for cellulosic ethanol.

Biodiesel is a diesel-equivalent, processed fuel derived from biological sources. Biodiesel is manufactured by chemically reacting vegetable oils, recycled cooking grease, or animal fats with alcohol in the presence of a catalyst. Biodiesel is primarily made from domestically produced soybean oil, meeting Environmental Protection Agency (EPA) regulations for ultra-low sulfur diesel fuel. Biodiesel is biodegradable, and reduces air pollutants such as particulates, carbon monoxide, hydrocarbons, and air toxins. There are 78 plants operating and 33 plants under construction nationwide. There are 12 plants operating and two under construction in Texas.

Texas Low Emission Diesel (TxLED) is an enforceable rule under Texas' State Implementation Plan (SIP). TxLED rules allow the Texas Commission on Environmental Quality (TCEQ) to approve alternative diesel formulations if the proposed formulation is tested according to the procedures specified in the rule. The sale and use of pure biodiesel is not regulated by TCEQ because it does not meet the definition of a

diesel fuel as specified under the TxLED regulations. Biodiesel is considered to be an additive when blended with petroleum diesel. As an additive, biodiesel is subject to TxLED regulations. When biodiesel is blended with TxLED, the resulting fuel blend must be equivalent to TxLED in reducing emissions.

There is evidence to indicate that biodiesel blends have higher NO_x emissions than TxLED, but there is widespread agreement that biodiesel may have significant reductions in emissions of other pollutants, including fine particulate matter, volatile organic compounds, and toxics.

The 80th Legislature may examine technical and policy aspects related to investment needs and economic barriers to developing biodiesel, biofuels, ethanol, and other renewable products.

Alternative Fuels and Natural Gas

Liquefied natural gas (LNG) is natural gas that has been super-cooled to minus 260° F and changed from gas to liquid. Liquefaction reduces volume by 600-to-one. The liquid is stored and transported cold in insulated containers at near atmospheric pressure. Proponents of LNG production, particularly closed-loop systems, as an alternative fuel source attest that LNG is safe, reliable, and environmentally friendly and that LNG plants located on the Texas gulf coast would create a more global market for natural gas. LNG is a vehicle fuel used mainly in heavy-duty trucks and buses.

Compressed natural gas (CNG) is made by compressing methane extracted from natural gas. It is stored and distributed in hard containers. CNG is generally considered an environmentally clean and safe substitute for gasoline and diesel fuel converted engines.

The 80th Legislature may consider legislation that would facilitate production of LNG and CNG as alternative fuel resources.

Coal Power Plants

As the Texas Commission on Environmental Quality (TCEQ) is considering permitting 16 new coal power plants, Governor Perry, by Executive Order RP49, October 27, 2005, required TCEQ to "apply full resources of the agency to prioritize and expedite the processing of environmental permit applications that are protective of the public health and environment and propose to use Texas' natural resources to generate electric power."

Proponents for expediting the permitting process assert that the new coal-fired plants will be more efficient and increase the state's energy capacity. Texas Utilities claims that the coal plants are going to be 80 percent cleaner than the national average and will increase energy capacity to the state.

Opponents to the permitting of the coal-fired plants say that the process that burns pulverized coal releases substantial amounts of carbon dioxide widely blamed for global warming and that coal-burning power plants that are permitted and operating before more stringent carbon-dioxide regulations go into effect may qualify for greater allowances than those built at a later date.

The 80th Legislature may examine the cumulative impact of the air pollution from coal plants and consider legislation to support the expedition of the permitting process for coal-fired power plants or a moratorium on coal plant construction.

Water

The State of Texas has jurisdiction over all surface water in the state with oversight by the Texas Commission on Environmental Quality (TCEQ). Texas groundwater is regulated regionally by regional and local groundwater districts with some uniform procedures set forth by the 79th Legislature.

The 80th Legislature may evaluate and monitor the effect of legislation enacted in the 79th Regular Session that requires joint planning among groundwater conservation districts within groundwater management areas. The 80th Legislature may assess all issues related to groundwater law, policy, and management, including the jurisdiction and authority of groundwater conservation districts and river authorities and the coordination of consistent and nondiscriminatory water policies.

Terminology of water issues:

Conjunctive Use: The conjunctive use of surface and groundwater consists of harmoniously combining the use of both sources of water in order to minimize the undesirable physical, environmental, and economical effects of each solution and to optimize the water demand/supply balance. Usually conjunctive use of surface and groundwater is considered within a river basin management program when the river and aquifer belong to the same basin.

Rule of Capture: The rule of capture which allows landowners to pump as much water beneath their land as they want without regard for the impact on their neighbors' supply was established in Texas in 1904 and still prevails.

Junior Water Rights: Junior water rights are granted subsequent in time to other water rights in the same basin. These rights are "junior" in time priority to all such rights that were previously granted or recognized by the state. No part of the junior water right can be impounded, diverted, or beneficially used and recognized until the senior right is satisfied in its entirety.

Interbasin Transfers: Interbasin transfers (IBTs) are movement of surface water from one basin to another, subject to approval and regulation in Texas by the Texas Commission on Environmental Quality.

Reuse: Water reuse is the use of surface water that has already been beneficially used once under a water right or the use of groundwater that has already been used. For example, treating wastewater and piping it to a golf course for irrigation is water reuse. There are two types of water reuse: direct reuse and indirect reuse.

Direct reuse is the use of effluent from a wastewater treatment plant that is piped directly from the plant to the place where it is used, such as a golf course.

Indirect reuse is the use of water, usually treated effluent, which is placed back into a river or stream and then diverted further downstream to be used again.

Desalination: Desalination is the removal of dissolved salts from seawater and from the salty waters of inland seas, highly mineralized groundwaters, and municipal wastewaters. Desalination makes such otherwise unusable waters fit for human consumption, irrigation, industrial applications, and other purposes.

Environmental Flow: Environmental flow is the amount of water needed in rivers, streams, and coastal bays to support fish and wildlife populations.

The 80th Legislature may consider policy regarding conjunctive use of ground and surface water; rule of capture; water rights; water marketing; reuse; and interbasin transfers, to ensure that communities can implement critical water supply projects.

With the increasing Texas population and water demand, particularly transitioning from agricultural to municipal and industrial uses, the 80th Legislature may again consider legislation facilitating desalination projects, environmental flow protection, and drought preparedness.

Groundwater Contamination

Legislation was introduced in the 79th Regular Session relating to remedies for environmental injuries caused by oil-related and gas-related activities under the jurisdiction of the Railroad Commission of Texas (RRC). H.B. 2881, which was left in committee, would have enhanced the powers, duties, and responsibilities of the RRC regarding application of remediation standards. The bill would have provided that complaints of contamination seeking remediation, or the cost of remediation, of oil and gas pollution be brought to the RRC and established a mechanism for parties to use the RRC's administrative process to determine the appropriate remedy. Opponents to this legislation argue in favor of damage awards to landowners rewarded by the courts. Proponents assert that the proposed process would ensure that appropriate cleanups would take place because currently landowners have no legal requirements to spend awarded money on remediation.

The 80th Legislature may re-evaluate appropriate regulatory and technical requirements to remediate contamination and prevent future contamination. The legislature may also consider legislation designating appropriate agency jurisdiction for preventing, responding, and remediating contamination by petroleum operations.

Water Use and Oil and Gas Production

Oil and gas drilling and production involves two kinds of water usage: rig supply water usage and injection water supply wells. Rig supply water usage requires approximately 10,000 barrels of water per month in the drilling process and 25,000 to 35,000 barrels of fresh water per month for "frac" usage or fracturing a well to stimulate and prolong production. Injection water supply well usage was estimated to be approximately 252 million barrels of freshwater in 1995.

Section 36.117 of the Texas Water Code allows a groundwater district to exempt certain wells from the requirement of obtaining a drilling permit or an operating permit. Section 36.117 prohibits a groundwater district from requiring any permit issued by the district for the drilling of a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas (RRC) provided that the person holding the permit is responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig. A groundwater district may require a permit if a well is no longer used for the purpose for which it was exempted.

With increasing demand on the water resources of the state and legislative attempts to grant groundwater districts the appropriate authority and uniformity to effectively

manage groundwater, some question whether the permitting exemption for the oil and gas industry is still appropriate. Those opposing this exemption argue that groundwater districts and regional planning groups need to know how much water is being used by oil and gas rigs in order to effectively manage for its use in the area. Opponents also state that spacing required in groundwater district permits are necessary to protect existing well owners' investments in their wells and infrastructure which relies on continued groundwater production. Those in favor of the exemption assert that the oil and gas industry is already heavily regulated by RRC and is required to adhere to and comply with all RRC spacing and pumpage rules.

The 80th Legislature may re-evaluate the current statutes, review the jurisdiction over the regulation of groundwater pumping, and consider legislation that provides equitable treatment in the permitting process.

Natural Gas Pipeline Industry

The 79th Legislature directed the Texas Railroad Commission (RRC) to conduct a study to examine and determine the extent to which viable competition exists in the Texas natural gas pipeline industry from the wellhead to the burner tip; recommend solutions to bring market competition to any non-competitive segments of the industry; and to assess the effectiveness of current laws, regulations, enforcement, and oversight in addressing any abuses of pipeline monopoly power and make recommendations for any necessary changes.

RRC appointed the Natural Gas Pipeline Competition Study Advisory Committee (committee) in April, 2006, and charged the committee with evaluating whether further improvements to RRC's informal complaint process are warranted; whether additional transparency is needed in the natural gas pipeline industry; what transporters should be affected by any change in policy or law; whether to give special treatment to marginal wells; whether RRC should exercise oversight regarding the types and categories of fees charged related to gas gathering and transportation; and whether other states methods for addressing discrimination relative to gas gathering and transportation should be adopted in Texas.

The 80th Legislature may consider legislation relevant to implementing the recommendations of the Natural Gas Pipeline Competition Study Advisory Committee.

Mineral Rights and Surface Rights

Often the mineral rights and surface rights of a property are owned by different entities who are increasingly less likely to have a relationship. Mineral rights owners have implied easement to use surface land for their benefit and surface owners are typically not entitled to reimbursement or damages, with exceptions for contracting limitations and judicial and regulatory restrictions. Judicial restrictions require that there be no negligent damage and no more damage to surface property than is "reasonably required." Regulatory provisions allow surface owners planning to subdivide property to seek to have drilling sites limited to designated areas in advance of subdividing and municipal ordinances provide reasonable limits to protect the health and safety of residences.

Legislation was proposed in the 79th Legislature relating to notice to a surface owner by an oil or gas well operator of certain oil and gas operations. S.B. 575, which failed in the house of representatives, would have required an oil or gas operator to give written notice to the surface owner not later than the third day after the issuance of a permit to drill a new well or reenter a plugged and abandoned well.

The 80th Legislature may again consider legislation to facilitate more effective communication between mineral rights owners and surface rights owners with the aid of technological advances in drilling operations and electronic communication.



STATE AFFAIRS

Civil Liability

In recent years, the state has begun outsourcing, or privatizing, child welfare case management and substitute care services. While the state's exposure to liability for an act or omission by the private contractor is limited, some nonprofit organizations have expressed concern that, lacking some of the protections granted to the state, they bear an increased risk of exposure.

Representatives of these nonprofit organizations state that while they previously provided care for the majority of children in the child welfare system, they now are responsible not only for care but for managing the entire case, working with families as well as with children, and making recommendations to the courts for permanency goals for the children. With the increased responsibilities, they fear, comes potentially increased exposure.

Others argue that, because all placements will be approved by a court, there will be little liability for nonprofit organizations that take on the traditional role of state workers in making recommendations regarding placements. They argue that strong risk management practices will allow those nonprofit organizations to avoid most lawsuits.

The 80th Legislature may consider proposals to limit nonprofit organizations' exposure to liability for non-economic damages in child welfare case management and substitute care services.

Elections

The federal Help America Vote Act of 2002 (HAVA) established a program to provide funds to states to replace outdated voting systems, created the Election Assistance Commission to assist in the administration of federal elections, and established minimum election administration standards for states and local governments for the administration of federal elections. H.B. 1549, enacted by the 78th Legislature, Regular Session, made changes in Texas election law to comply with HAVA.

The costs of complying with these new laws and the practical challenges to their implementation have caused controversy within many rural counties and small municipalities. While many smaller government entities are not subject to the provisions

of HAVA, they are subject to similarly written provisions of the Texas Election Code. County officials cite the high cost of programming and implementing electronic voting machines as a strain on local resources, especially in locales with smaller voting bases. Additionally, they have complained of various vendor-related problems, including the timely provision of electronic voting machines and accurate programming of ballots.

The 80th Legislature may address costs associated with the use of electronic voting machines, especially as they relate to smaller government entities. Additionally, the legislature may consider methods to improve coordination with voting machine vendors during the election cycle.

Emergency Medical Services

Emergency medical services (EMS), which Texas began regulating in 1983, are provided by a variety of sources, including hospitals, fire departments, police departments, municipalities, counties, private for-profit entities, and volunteers. In 2000, volunteers provided 35 percent of EMS care but that percentage has since declined to 25 percent.

The Department of State Health Services (DSHS) has identified reimbursement rates as a factor in declining access to EMS in rural areas. For many years, rural EMS providers did not bill for those services, relying instead on donations. Once they began billing for services, they experienced a decline in donation levels. Private providers began moving into rural areas but pulled out when they were unable to make a profit, while many hospitals have found the Medicare reimbursement rates to be too low to make it worthwhile to offer EMS care.

According to DSHS, some areas of West Texas have only one or two EMS vehicles to cover thousands of square miles, and declining numbers of volunteers may leave many parts of the state with no EMS providers.

There are multiple levels of EMS support, ranging from basic life support to medical intensive care units, and five levels of EMS personnel, ranging from emergency care attendants who have 40 to 69 hours of training to paramedics who have 1,000 to 1,500 hours of training. As a result, the cost per unit to operate an ambulance ranges from \$65 to \$150 per hour.

While a hospital district or emergency services district may provide health services, some rural areas have found that their tax base is insufficient to support EMS care without state support.

The 80th Legislature may consider measures to increase the availability of emergency medical services, including improved reimbursement rates and matching funds in communities that create emergency services districts.

Eminent Domain

Eminent domain is the power of a governmental entity to take private property. The Fifth Amendment to the United States Constitution provides that the government may take private property only for public use and with just compensation. In 2005, in *Kelo, et al. v. City of New London, et al.*, the United States Supreme Court ruled that a city's use of eminent domain to take private land for economic development did not violate the Fifth Amendment. In response to *Kelo*, the 79th Texas Legislature, Second Called Session, 2005, enacted S.B. 7. This bill bars a state agency, institution of higher education, or political subdivision from taking private property through eminent domain primarily for economic development purposes or if the taking confers a private benefit on a particular private party. A taking is permitted if economic development is a secondary purpose resulting from eliminating slums or blighted areas.

Some are concerned that governmental entities may still abuse the power of eminent domain. One recommendation is to define "public use" as the ownership, occupation, or use of property by the public and to place this definition in the state constitution. Another concern is that local governments may exploit the broad definition of "blight" to condemn property through eminent domain and turn it over to a private developer. Recommendations include either removing this blight exception or narrowing this exception so that it applies only to unsafe or slum properties that present an immediate threat to public health and safety. The taking of property for common carriers is traditionally considered a public use. One recommendation is to ensure that the definition of common carrier is narrow and specific.

Some argue that the condemnation process encourages the condemning authority to make offers below the value of the land. Property owners who cannot bear the expense of a court battle must accept this low offer. One suggestion is that condemning authorities should be liable for attorney fees and court costs if a property owner is successful in court. Others argue that focusing on the market value of the property does not adequately compensate the owner for the loss of the property. Suggestions include considering all factors increasing or decreasing value of property when appraising the property, as well as considering the proposed future use of property and relocation and replacement costs.

More drilling in suburban and urban areas for oil and gas has resulted in more pipelines that must cross private property. How these pipelines are regulated and routed is becoming more of an issue.

Others argue the S.B. 7 bars *Kelo*-type takings for economic development, but still gives public entities the necessary authority to take property for public use and there is no need for further reform.

The 80th Legislature may consider legislation clarifying the powers of eminent domain.

Government-mandated Health Insurance Coverage

Under the Texas Insurance Code and Texas Administrative Code, health insurance providers are mandated to offer a particular set of services and benefits in order to conduct business in the state, notwithstanding a number of exceptions. In the 78th Legislature, Regular Session, legislation was passed which authorized insurers and health maintenance organizations, under certain circumstances, to issue plans that do not include state-mandated health benefits. Approximately 20 to 22 percent of Texans currently are covered by insurance plans subject to state mandates.

According to the Texas Department of Insurance, there are over 70 mandated benefits, with new ones periodically added. The most recent mandate was added through H.B. 1485, enacted by the 79th Legislature, Regular Session, which provides health plan coverage for HPV (human papilloma virus) and cervical cancer screening tests.

Proponents argue that mandates help lower the cost of health care, ensuring that individuals receive treatment for many potentially serious conditions before they worsen or cause additional health complications. Opponents say that mandates limit consumer choice, raise the cost of health insurance plans, and, ultimately, result in fewer Texans having access to affordable health insurance.

The 80th Legislature may consider modifying the number of such mandates, focusing on those that demonstrate an ability to lower long-term health care costs.

Statutory Employer

Under Texas law, the exclusive remedy available to an employee injured on the job whose employer subscribes to the state's workers' compensation system is the recovery of workers' compensation benefits. Texas is the only state in which participation by employers in the workers' compensation insurance program is voluntary and currently only about half of Texas employers participate in the workers' compensation system.

Under Section 406.123 (Election to Provide Coverage; Administrative Violation) of the Texas Labor Code, a general contractor and a subcontractor may agree that the general

contractor will provide workers' compensation insurance coverage to the subcontractor and the subcontractor's employees. Such an agreement makes the general contractor the employer of the subcontractor and its employees for purposes of the state's workers' compensation laws. The subcontractor and its employees in effect become the statutory employees of the general contractor.

Often a subcontractor will contract out work to other subcontractors. A question has arisen over whether the statutory employee protection granted by Section 406.123 to the contractor applies to all the lower tiers of subcontractors who were not part of the original agreement. In January 2004, a Texas appellate court ruled in *Etie v. Walsh and Albert Company, Ltd., et al.*, 135 SW3d 764 (Tex. Ct. App. 2004), that the statutory employer/employee relationship extends throughout all tiers of subcontractors; therefore, all the employees of the contractor and its subcontractors are covered by the workers' compensation system, and the contractor and all the subcontractors are equally immune from suit by an injured employee.

Some advocates for employees argue that *Etie* does not promote worker safety if someone is not held responsible for unsafe actions. Advocates for employers have argued that the system should look at who receives benefits rather than who pays for them and that if a worker receives benefits, that should be the exclusive remedy. Such a provision, they state, would protect everyone at the jobsite—employees, employers, and property or business owners.

The 80th Legislature may review this issue and consider clarifying the extent of the protection offered by Section 406.123, Labor Code.



TRANSPORTATION AND HOMELAND SECURITY

Criminal Activity Along the Border

Although criminal activity and violence along the Texas-Mexico border is not new, many law enforcement officials assert that violent crime in this area has escalated as drug cartels have become highly organized and expanded into other lucrative crimes, such as human smuggling. Proposals include: continuing united efforts by various law enforcement agencies to decrease all crime near the Mexican border; improving communication between local, state, and federal law enforcement; building facilities for the storage and destruction of drugs in the border region; and providing local governments in that region with more federal and state funding to support social programs and provide sufficient resources to local law enforcement. Many law enforcement officials in the border region oppose proposals imposing immigration enforcement responsibilities on local law enforcement, which they argue would affect the ability of local law enforcement to address crime.

In February 2006, a comprehensive border security strategy, Operation Rio Grande, was launched to combat crime in the Texas-Mexico border region. Under the operation, the state has a leading role in coordinating intelligence and law enforcement assets within 100 miles of the border in an effort to reduce crime in the region. The operation was developed to build upon the work of Operation Linebacker—the effort of the Texas Border Sheriff's Coalition to increase manpower and equipment to reduce crime and violence. Operation Rio Grande divides the border region into five sectors: Del Rio, Laredo, El Paso, Big Bend, and Valley Star. Representing 27 Texas counties, the operation coordinates resources from the Department of Public Safety, the Department of Criminal Justice, the Department of Transportation, the Department of Parks and Wildlife, and county and local law enforcement entities, along with surface, aerial, and maritime vehicles to patrol the border region.

Reporting a 60 percent border-wide average decrease in crime, Governor Perry stated an intent to ask the legislature for \$100 million to sustain border security operations. He stated that enhanced technology tools, increased manpower, and an expansion of other resources will ensure a safer Texas-Mexico border region.

The 80th Legislature may consider funding sources for a continuation or expansion of current crime deterrent operations in the Texas-Mexico border region.

Border Security

Texas shares 889 miles of the 1,940-mile United States-Mexico border. On October 26, 2006, President Bush signed a law providing for the construction of a 700-mile fence along the southwestern border of the United States (U.S.) in an attempt to reduce illegal immigration into the U.S. from Mexico. The federal legislation has created controversy not only in Washington, D.C., but in the southern border states that would be effected. In addition to the construction of a border fence, the bill authorizes more vehicle barriers, checkpoints, and lighting to help prevent illegal entry into the U.S. from Mexico.

The proposed placement of the fence includes 176 miles of fencing from Laredo to Brownsville, and 51 miles of fencing from Del Rio to Eagle Pass. The U.S. Department of Homeland Security (DHS) is charged with securing the U.S.-Mexico border and is responsible for executing the construction of border-protecting structures. As part of the DHS budget appropriation, \$950 million in federal funds to pay for the fence are being withheld pending a breakdown by DHS on how they will be spent. While the Secure Fence Act authorizes the building of a double-layer fence in certain areas of the border, the funds made available for the fence may also be spent on roads, technology, and tactical infrastructure to support a virtual fence. Additionally, state and local representatives are to be consulted to determine the best placement of any erected structures.

Environmental groups and U.S. Fish and Wildlife Service wardens warn that a double-barrier fence topped with bright lights will disrupt the migration of many species, including jaguars, hawks, and hummingbirds. Stating that the border area is home to many endangered species of plants, birds, and animals, scientists say that the series of barriers will harm wildlife. Supporters of the fence claim that it will enhance border security and aid in preventing an estimated one million illegal immigrants from entering the U.S. each year.

The 80th Legislature may consider plans presented by DHS on the exact placement of impenetrable structures along the Texas-Mexico border, consider the use of technology and other infrastructure to monitor border crossings, or confer with the federal government in developing plans to secure the border region.

Pre-owned Heavy Duty Truck Dealerships

In 1999, the 76th Legislature enacted Section 2301.476, Occupations Code, to prohibit vehicle manufacturers from possessing a controlling or partial interest in vehicle dealerships in Texas. As originally enforced by the Texas Department of Transportation (TxDOT), the statute prohibited passenger vehicle and light truck manufacturers from

owning a new vehicle dealership. Subsequent interpretation of the statute by TxDOT has since included used medium and heavy duty truck manufacturers in this prohibition.

Prior to this interpretation of the statute, medium and heavy duty truck manufacturers operated used vehicle dealerships in the state since the 1970s. Proponents of amending the statute state that this is an unintended legislative consequence, and that the law needs revision so that businesses that have operated in Texas for over 30 years can continue to do so. Those opposing any amendments state that manufacturer-owned dealerships, new or used, provide an unfair advantage to those dealerships as they are in direct competition with a manufacturer's franchisee.

The 79th Legislature created the Joint Study Commission on Availability of Pre-Owned Heavy Duty Commercial Motor Vehicles to make recommendations on whether to maintain Section 2301.476, Occupations Code, as it currently exists, or to amend it to allow medium-duty and heavy-duty truck manufacturers to own used vehicle dealerships in Texas. The 80th Legislature, based on the recommendations of this commission, may consider amendments to the statute.

Ports

With the increasing strain on Texas' highway system from the growth in freight movement in recent years, there is a need to identify alternate modes of transportation of cargo and goods. Due to an expected overflow from western U.S. ports, an increase in cargo shipments at Texas ports and border crossings is expected in the next 20 years. Additionally, congested roadways and inadequate rail connections at ports often result in delays and increased transportation costs. To move cargo quickly between ports and inland origins and destinations, trucks and railroads need clear and uncongested access.

However, the Texas Department of Transportation (TxDOT) is prevented by the state constitution, state statute, and federal requirements from using its funds on projects other than the highway system.

The 80th Legislature may examine funding sources to provide for an expansion of port activities to prepare for future trade growth and determine which agency should be responsible for the management of said funds and projects. Additionally, the legislature may consider ways to develop Texas' ports in order to use coastal waterways to transport cargo and reduce reliance on overland transportation.

Rail Relocation Fund

In 2005, Texas voters approved the creation of a Texas Rail Relocation and Improvement Fund (fund) to finance the relocation, construction, reconstruction, acquisition, improvement, rehabilitation, and expansion of public and privately owned passenger and freight rail facilities. Proponents of the fund stated that projects financed by the fund would help alleviate traffic congestion, enhance traffic safety, and improve air quality by removing more freight trucks from state roadways and placing them on railroads relocated outside of urban areas. The legislation creating the fund authorizes the legislature to dedicate one or more specific sources of revenue to the fund, and thus the legislature may consider various revenue sources to generate income for the fund.

Recent studies by the Texas Department of Transportation, the Port of Houston Authority, the City of Houston, and Harris County on the mobility impact of freight rail have highlighted recommendations for rail enhancements and relocations to limit the negative impacts of freight rail on communities and vehicle traffic. The 80th Legislature may examine the recommendations of various state and local entities to determine the best manner in which to accomplish the goals of the fund, and determine the revenue source(s) for the fund.

Transportation Financing

Motor fuel taxes are increasingly being seen as an inadequate revenue source to fund transportation projects across the United States, especially in a state the size of Texas. Both federal and state fuel tax receipts are increasing at a rate much slower than either traffic volumes or transportation system costs, and they no longer cover the costs of building, operating, and maintaining Texas' transportation system. The current rate of 18.4 cents per gallon and 20 cents per gallon for federal and state taxes on gasoline, respectively, has not kept pace with inflation, and is one of the reasons for funding shortfalls for transportation projects.

With dwindling funding sources, increasing strain on the existing transportation system, and rising costs for all aspects of transportation projects—land, labor, capital equipment, and materials—the 80th Legislature will likely be faced with determining the best method to fund and manage maintaining and expanding the state's transportation footprint. The Texas Department of Transportation (TxDOT) estimates that the state is currently facing an \$86 billion shortfall in pending projects and available funds.

Several options have been presented recently to address the issue of financing future transportation needs. TxDOT states that to close the funding gap and prepare the state for future transportation needs with the current funding mechanism will require a gas tax of

\$1.40 per gallon. Another option is to bond future revenue from the gas tax, allowing accelerated construction of necessary projects, reducing the state's out-year costs on these projects. Conversely, TxDOT predicts that should nothing be done to the transportation funding structure, there will be no money to expand the capacity of the transportation system by 2014, and the gap between available funding and projected needs will widen to \$258 billion by 2030.

Opponents of an increase in the gas tax cite the probable elasticity in the future demand for gasoline as the population begins to look for alternative fuels and modes of transportation. Such reasoning is also used in opposition to bonding future gas tax receipts, in addition to referencing northeastern states that indebted their gas taxes to build transportation projects. Many of these states do not presently have any discretion in choosing future projects as all receipts from the gas tax are committed to debt service.

Other options being pursued by other states include a pilot project in Oregon which uses GPS locators to charge drivers based on the miles driven, replacing the gas tax as a per gallon tax with a miles driven tax. Additionally, the State of California authorizes counties to present to voters a list of construction projects to be funded by an explicit increase in the sales tax rather than a corresponding increase in the motor fuels tax. Opponents of such a funding structure state that there may be instances where counties bypass regional planning boards to gain approval and funding for certain projects, which could affect a statewide transportation master plan.

With the funding structure of transportation projects becoming less adequate to address future needs, the 80th Legislature may examine the options discussed herein, or pursue alternative concepts to help the state meet the needs of its growing population.



VETERANS AFFAIRS and MILITARY INSTALLATIONS

Military Voting

Military personnel have limited methods by which to receive election ballots and to cast votes for elections. According to the Federal Voting Assistance Program, a soldier may receive an absentee ballot via mail, fax, or e-mail, and the soldier may cast a vote by faxing or mailing the ballot before 7:00 p.m. on Election Day. To be eligible to cast a vote by fax, a soldier is required to be in a hostile combat zone, be receiving hostile fire pay, or be receiving imminent danger pay. The soldier must also have a permanent residence in Texas as defined by Section 1.015 (Residence), Election Code, to cast a vote in a Texas election.

Because of the limited avenues to voting available to soldiers overseas, the 80th Legislature also may consider legislation that allows soldiers alternate methods of casting votes other than by fax or mail.

The military overseas voting process is a lengthy process, and a ballot cast by military personnel may not be counted if the ballot is not received in a timely fashion. Local election officials currently are required to mail early election ballots 45 days prior to Election Day, but this timeline may not allow adequate time for overseas military personnel to cast a vote.

The 80th Legislature may consider legislation to provide additional time for county clerks to send, and military personnel to receive and return, ballots. The 80th Legislature also may examine the feasibility of e-mailing ballots to soldiers so that the soldiers may receive the ballot in a timely fashion.

Transfer of Veterans Employment Programs from Texas Workforce Commission to the Texas Veterans Commission

Veteran employment services were first offered under the original "G.I. Bill," which was titled the Servicemen's Readjustment Act of 1944. Since then, legislation has updated and modified the programs operated under the Act to provide additional benefits for veterans.

The Texas Workforce Commission (TWC) has traditionally administered the veteran employment programs. H.B. 2604, 79th Legislature, Regular Session, 2005, transferred

the veteran employment programs to the Texas Veterans Commission (TVC). The veteran employment programs provide job services, which include counseling/case management, job-search assistance, job development, referral and placement to eligible veterans.

In passing H.B. 2604, Texas became the first state to separate its veteran employment program from the state's workforce agency. The effectiveness of such a move was untested and the Senate Veteran Affairs and Military Installations Committee has been monitoring the transfer. According to the committee staff, not enough time has passed to determine the effectiveness of the move. Since passage of the legislation, Texas has experienced significant growth in the number of veterans staying in Texas after discharge from military service.

As more Texas veterans are returning from military service overseas needing employment and placement services, increasing financial and functional burdens are being placed on the existing programs. The Sunset Advisory Commission (SAC) review found that these challenges were overwhelming the TVC system and that further evaluation was required to identify solutions to the problem. The SAC recommendations included improved program management, better education regarding benefits and services, and better coordination with local service officers.

The 80th Legislature may examine issues that have developed subsequent to the transfer of the veteran employment programs from TWC to TVC. The 80th Legislature may also consider implementing SAC recommendations.

The Hazlewood Act

The Hazlewood Act (Hazlewood), Section 54.203, Education Code, entitles wartime veterans and their children to an exemption from tuition and fees at institutions of higher education.

Questions regarding the Texas residency and citizenship requirements for the Hazlewood program have arisen. There has been confusion regarding whether an applicant is required to be a Texas resident and a Texas citizen prior to the time of registration. A Texas Attorney General's Opinion (GA-0347) concluded that Section 54.203(a), Education Code, requires a veteran to be a Texas resident 12 months prior to registering for the Hazlewood program. The opinion also concluded that a citizen of Texas is also a citizen of the United States and to receive Hazlewood benefits, a veteran must have been a United States citizen and a Texas resident when entering the military.

The 80th Legislature may consider legislation that allows a veteran to qualify for Hazlewood benefits if he/she is a United States citizen at the time he/she files for Hazlewood benefits, rather than at the time he/she entered military service. This would authorize benefits to veterans who became United States citizens after joining the military.

Veteran Disability Property Tax Exemption

Currently, Texas offers property tax exemptions to disabled veterans ranging from \$5,000 of the assessed value of the home to \$12,000, based on a disability rating system. In 1995, the 74th Legislature increased the property tax exemptions for disabled veterans and for the spouses and children of veterans who die while on duty.

Since the last legislative change to the property tax exemption in 1995, the cost of living has risen in excess of 30 percent. The \$5,000 exemption provided in 1995 is equivalent to a \$3,500 exemption today. Local property taxes have also grown significantly during the 11-year period, making it difficult for veterans to continue to afford the taxes on their homes. Exacerbating this situation, one in five veterans returning from Iraq and Afghanistan is disabled or partially disabled.

The 80th Legislature may consider legislation that would increase the amount of property tax exemptions for disabled veterans.

Predatory Lending Practices

“Payday” loans are short-term loans in exchange for a fee and interest applied to either a post-dated check or electronic debit authorization from the borrower’s account. Military personnel have experienced high incidence of abuse through such lending practices, including collection activities and wage garnishment while the member is deployed in combat.

S.B. 1479, enacted by the 79th Legislature, provides protections to military members and their families from payday loan practices that tend to be predatory in nature.

The 80th Legislature may continue to monitor the issue of predatory “payday” lending practices related to the military personnel.

Base Realignment and Closure (BRAC)

Since 1988, the federal Base Realignment and Closure (BRAC) process has led to the closure of many Texas military installations and realignment of others. Some Texas communities depend on the economic activity generated by military bases in their communities. The legislature enacted legislation to assist local, state, and federal governments to improve military operations and to ensure that communities that are affected by BRAC closures are provided necessary state support during the transition.

The 79th Legislature enacted S.B. 252 (relating to a project of a development corporation in connection with a military base or facility), which allows communities to use sales tax revenue to provide improvements to military installations; and H.B. 2340 (relating to grants and loans for certain economic development projects to assist defense communities affected by the federal military base realignment and closure process) to assist military communities to redevelop and adjust after a military base closing or realignment.

Concerns have been raised regarding the need for infrastructure assistance to address the realignment of military installations. Some communities are facing infrastructure issues relating to drastic population growth. The population of military personnel assigned to Fort Sam Houston and Fort Bliss is projected to double at each installation by 2011. Infrastructure assistance for rail and road development for transportation of equipment and supplies for the bases has been raised as an issue of concern.

Additional concerns have been raised regarding the lack of coordination between the affected communities and the base redevelopment planning committees in the planning and redevelopment process once a military base is scheduled to close.

Some military bases have been relocated or conflicts have arisen between the military installations and local governments due to city or municipality encroachment. For example, light “pollution” from nearby municipalities has caused problems with night mission flight training requirements.

The 80th Legislature may address other avenues of funding for the support of communities affected by BRAC decisions and for infrastructure needs of the military due to the increased missions assigned to the bases.

The 80th Legislature may examine the BRAC redevelopment process and may establish rules or requirements for counties and municipalities to adhere to when a military base closes.

ISSUES FACING THE 80TH TEXAS LEGISLATURE

The 80th Legislature may also consider regulating development of property near military bases.



SUNSET REVIEW

The Sunset Advisory Commission (Sunset) reviewed 22 entities scheduled for consideration by the 80th Legislature. The Sunset process provides for the examination of state boards, agencies, and commissions in order to determine their efficacy in carrying out their missions. Sunset legislation for the following entities may be considered:

Texas Alcoholic Beverage Commission

Texas Animal Health Commission

Texas Commission on the Arts

Study of Health Benefit Plan Coverage for Brain Injury

Correctional Managed Health Care Committee

Study of Court Costs and Fees

Texas Board and Department of Criminal Justice

Prepaid Higher Education Tuition Board

Texas Historical Commission

Historical Representation Advisory Committee

Texas State Library and Archives Commission

Board of Nurse Examiners

Board of Pardons and Paroles

Texas Real Estate Commission

Risk Management Board

Office of Rural Community Affairs

Office of State-Federal Relations

Texas Structural Pest Control Board

Teacher Retirement System of Texas

Texas Veterans Commission

Texas Veterans Land Board

Texas Veterinary Medical Diagnostic Laboratory